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ABSTRACT

This reference manual for administrators contains: (1) the compiled laws, rules, regulations, and policies relevant to programs conducted under Title I of the Federal Elementary, Secondary and Continuing Education Act of 1965 as amended; (2) provisions of New York State Law concerning Pupils with Special Educational Needs; and (3) the New York State's Commissioner's Regulations remediation. The material is coded to facilitate access. (Author/APM)

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ED202977

ESEA I/PSEN
Compiled Laws and Policies
CLPs

Compiled laws, rules, regulations and policies relevant to programs conducted under Title I of the Federal Elementary, Secondary and Continuing Education Act of 1965 as amended and provisions of New York State Law concerning Pupils with Special Educational Needs and New York State Commissioner's Regulations regarding remediation.

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Division of Education Opportunity Programs
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ASSISTANT COMMISSIONER
FOR GENERAL EDUCATION
AND CURRICULAR SERVICES

December 1, 1980

TO: District Superintendents, Superintendents of Public and Nonpublic Schools, and Presidents of Boards of Education

FROM: Maria Ramirez, Assistant Commissioner

SUBJECT: Compiled Laws and Policies, ESEA Title I/PSEN (CLPs, ESEA I/PSEN)

The many documents which govern remedial programs in New York State are found, at the State level, in State Law, Rules of the Board of Regents and Regulations of the Commissioner of Education, the State Education Department Monitoring and Enforcement Plan for ESEA Title I, guidelines, and policy interpretations issued by the State Education Department; at the Federal level in acts such as ESEA Title I and its governing regulations, policy memoranda and, regulations based on laws such as the Education Division General Administrative Regulations (EDGAR). All documents relevant to ESEA Title I and Pupils with Special Education Needs (PSEN) are not found in one place. When questions arise on specific issues it is difficult to access appropriate information expeditiously. School district administrators have expressed frustration at the number of memoranda, bulletins and materials sent by the Department on a given topic. It has become increasingly difficult for local administrators to keep up with the changes and to determine which policies, guidelines, regulations, etc., are no longer relevant.

CLPs was designed as a reference manual containing all the laws, regulations and policies relevant to ESEA Title I and PSEN. The looseleaf format and coding will facilitate ongoing revision as needed. It is the State Education Department's intent to keep you informed of changes as they occur. Most of the manual is technical and contains information as cited in original sources. Therefore, it does not provide "light, enjoyable" reading. We have attempted to code the material for easy access.

A form for submitting suggestions, additions, or corrections is included on the following page. Please use this form to submit your critique and be sure to include appropriate citations. Your suggestions regarding format, organization, and content would be appreciated. Kindly send all comments to: John L. House, Director, Division of Education Opportunity Programs, New York State Education Department, Room 878 EBA, Albany, New York 12234.

We thank all who assisted in developing CLPs. We are especially grateful to C. Michael Darcy and the Staff of the Division of Education Opportunity Programs.

Addition-Correction

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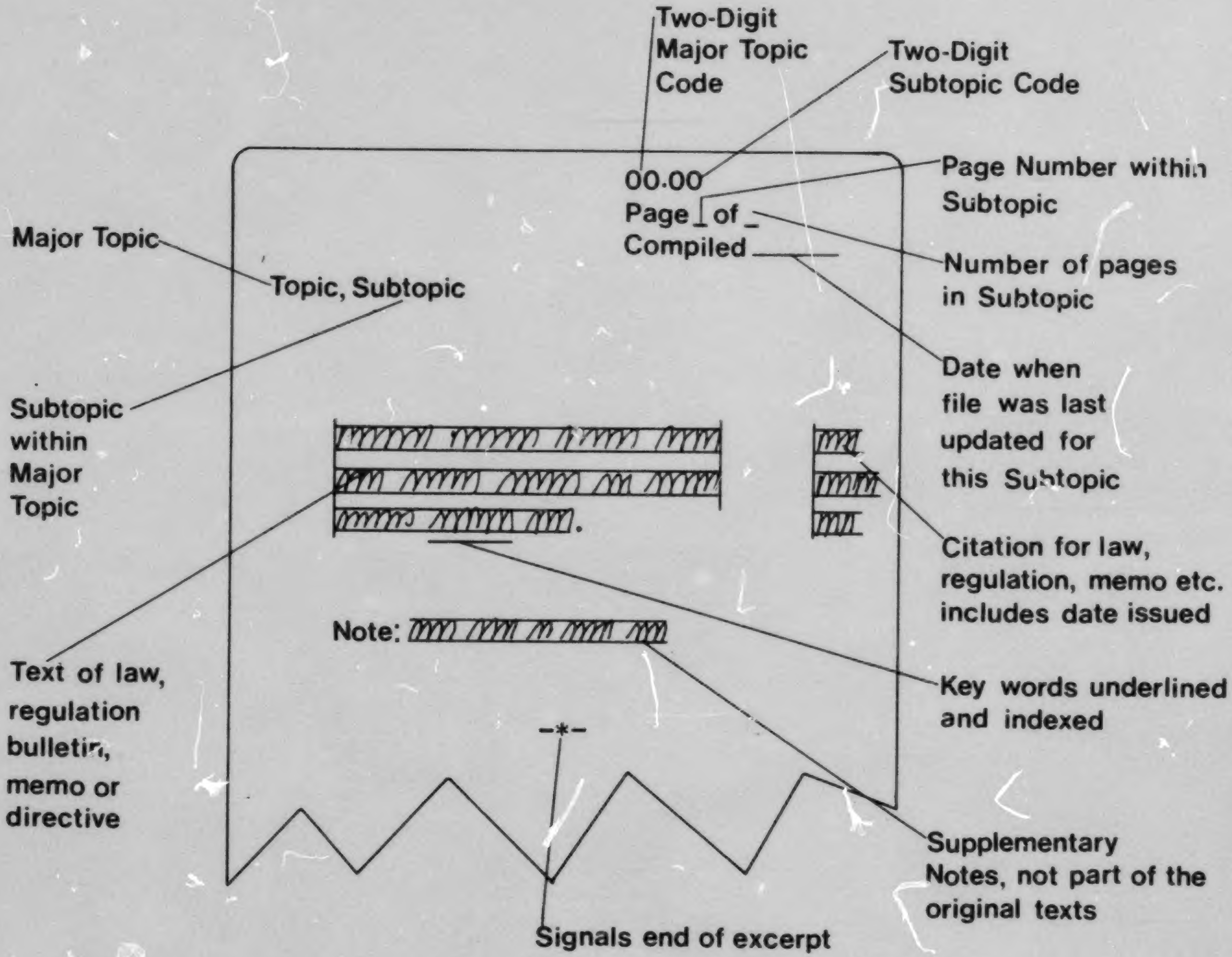
FORMAT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Page Number within Subtopic
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Citation for law, regulation, memo etc. includes date issued
Note:
Text of law, regulation bulletin, memo or directive
Key words underlined and indexed
-*-
Supplementary Notes, not part of the original texts
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GOALS

ESEA I Sec. 101. Declaration of Policy. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following pats of this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children. Further, in recognition of the special educational needs of children of certain migrant parents, of Indian children and of handicapped, neglected, and delinquent children, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to help meet the special educational needs of such children.

P.L. 95-561
11/1/78

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Part 100 (f) Pupils who score below the designated Statewide Reference Point in the third grade Pupil Evaluation Test shall be provided appropriate remedial instruction designed to enable them to score above the Statewide Reference Point on the sixth grade Pupil Evaluation Program Test. Pupils who score below the designated Statewide Reference Point on the sixth grade Pupil Evaluation Test Program shall be provided appropriate remedial instruction designed to enable them to score above the Statewide Reference Point on the preliminary competency tests and/or pass the Regents Competency Test in mathematics. The parent or guardian of a pupil who is to be provided remedial instruction shall be notified in writing, by the principal, of the Pupil Evaluation Program Test results and the plan for remedial instruction, which shall begin no later than the commencement of the school semester after which the test is given.

NYS Commissioner's
Regulations
4/30/79

Statutory Authority
Education Law
Section 207

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Part 103.2 (c) Remedial instruction

NYS Commissioner's
Regulations
Part 103
4/30/79

Statutory Authority
Education Law
Section 207

(1) Regents preliminary competency tests in reading and writing shall be administered to pupils in grade 8 or 9, except those pupils who, in grade 6, obtain scores at or above the 1966 statewide median on the Pupil Evaluation Program tests, or at or above the nationwide median on nationally standardized basic skills tests administered in grade 8 or 9 in the respective basic skill areas. Pupils who score below the designated statewide reference point on one or more of the preliminary competency tests shall be provided appropriate remedial instruction designed to enable them to pass the above required Regents competency tests by the time they are otherwise qualified to graduate.

(2) Pupils in grade 9 or above who fail the Regents Competency Test in Mathematics shall be provided appropriate remedial instruction designed to enable them to pass the Regents Competency Test in Mathematics by the time they are otherwise qualified to graduate.

(3) Pupils who fail the Basic Competency Tests in Reading, Writing or Mathematics shall be provided appropriate remedial instruction designed to enable them to pass the Basic Competency Tests by the time they are otherwise qualified to graduate.

(4) A pupil who shall be provided remedial instruction, and the parent or guardian of such pupil, shall be notified in writing by the principal, of the test results and the plan for remedial instruction. Remedial instruction provided as a result of a pupil's performance on the preliminary competency tests administered in the Spring semester of 1979 shall begin no later than the beginning of the Fall semester of 1979. The remedial instruction provided as a result of a pupil's performance on the preliminary competency tests administered in the fall semester of 1979, and thereafter, shall begin no later than the Spring semester following the test administration. Such instruction provided as a result of a pupil's failure to pass the Basic Competency Tests or the Regents Competency Test shall begin with the Spring semester if such tests were administered in January, or no later than the following semester if such tests were administered in June or August.

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CHILDREN TO BE SERVED

ESEA I Sec. 123. (a) GENERAL PROVISIONS. - Except as provided in subsections (b), (c), and (d) of this section and section 133, a local educational agency must use funds received under this title for educationally deprived children, identified in accordance with section 124(b) as having the greatest need for special assistance, in school attendance areas or schools satisfying the requirements of section 122.

P.L. 95-561
11/1/78
as amended by
P.L. 96-46
8/8/79

(Note: Sec. 133 deals with school-wide projects, see 06.70. Sec. 124(b) deals with assessment of need, see 05.10. Sec. 122 deals with designating eligible schools see 07.20.)

(b) CONTINUATION OF ELIGIBILITY FOR EDUCATIONALLY DEPRIVED CHILDREN WHO ARE NO LONGER IN GREATEST NEED OF ASSISTANCE. - Whenever for a fiscal year, an educationally deprived child in a school attendance area or school satisfying the requirements of section 122, does not meet the requirement of subsection (a) requiring that he be in greatest need of special assistance, but did meet such requirement in any previous year, and is still educationally deprived, that child may participate in a program or project assisted under this title for the current fiscal year.

(c) CONTINUATION OF ELIGIBILITY FOR EDUCATIONALLY DEPRIVED CHILDREN TRANSFERRED TO INELIGIBLE AREAS OR SCHOOLS IN THE SAME YEAR. - Educationally deprived children who begin participation in a program or project assisted under this title, in accordance with subsections (a) and (b) but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this title, may, if the local agency so determines, continue to participate in a program or project funded under this title for the duration of that same school year.

(d) SKIPPING CHILDREN DETERMINED TO BE IN GREATEST NEED OF ASSISTANCE WHO ARE RECEIVING SERVICE OF THE SAME NATURE AND SCOPE FROM NON-FEDERAL SOURCES. - The Commissioner shall issue regulations providing for an exemption to subsection (a) permitting local educational agencies, in providing services under this title, to skip educationally deprived children in greatest need of assistance who are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this title.

NOTE: In paragraph (d), as elsewhere in Federal Law and Regulations, "Commissioner" now means the Secretary of the U.S. Department of Education

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Programs for Educationally Disadvantaged Handicapped Pupils

Handicapped children attending public and nonpublic schools are eligible for ESEA Title I services. However, because of the several sources of funding specifically designed to assist pupils with physical or mental handicapping conditions, the policy of ESEA Title I is that, to receive compensatory services, the handicapped student must be educationally disadvantaged.

ESEA I State Policies and Federal Guidelines for Education of the Disadvantaged (selected summary) NYSED 1978

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PSEN and ESEA Title I funds may not be used to provide Special Education but may be used to provide remedial and bilingual education to eligible students who may also be receiving Special Education.

Guidelines and Instructions for the Comprehensive District Plan...
1980-81 NYSED

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Part 103.2 (c) Remedial Instruction

NYS Commissioner's Regulations
Part 103
4/30/79

Statutory Authority
Education Law
Section 207

(1) Regents preliminary competency tests in reading and writing shall be administered to pupils in grade 8 or 9, except those pupils who, in grade 6, obtained scores at or above the 1966 statewide median on the Pupil Evaluation Program tests, or at or above the nationwide median on nationally standardized basic skills tests administered in grade 8 or 9 in the respective basic skill areas. Pupils who score below the designated statewide reference point on one or more of the preliminary competency tests shall be provided appropriate remedial instruction designed to enable them to pass the above required Regents competency tests by the time they are otherwise qualified to graduate.

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(2). Pupils in grades 9 or above who fail the Regents Competency Test in mathematics shall be provided appropriate remedial instruction designed to enable them to pass the Regents Competency Test in mathematics by the time they are otherwise qualified to graduate.

(3). Pupils who fail the Basic Competency Tests in reading, writing or mathematics shall be provided appropriate remedial instruction designed to enable them to pass the Competency Tests by the time they are otherwise qualified to graduate.

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Section 100.1 (f). Pupils who score below the designated Statewide Reference Point in the third grade Pupil Evaluation Program Test shall be provided appropriate remedial instruction designed to enable them to score above the Statewide Reference Point on the sixth-grade Pupil Evaluation Program Test. Pupils who score below the designated Statewide Reference Point on the sixth grade Pupil Evaluation Program Test shall be provided appropriate remedial instruction designed to enable them to score above the Statewide Reference Point on the preliminary competency tests and/or pass the Regents Competency Test in mathematics...

NYS Commissioner's
Regulations
Part 100
4/30/79

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149.2 (b) Pupils with special educational needs shall mean pupils:

(1) in grades three through twelve who score below the Statewide reference point on any State mandated test, or who score below a point deemed by the commissioner to be equivalent to the Statewide reference point on any other acceptable test; or

(2) in grades kindergarten through two who attain, on a test or through an acceptabale uniform formal screening procedure, scores or evaluations which predict serious deficiencies in reading, writing, and/or mathematics by the time such pupils enter grade three; or

(3) who be reason of limited English proficiency are unable to attain a score above the Statewide reference point on a State mandated test or an equivalent score on any other acceptable test.

NYS Commissioner's
Regulations
Part 149
12/24/80

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149.3 (c) Pupils with special educational needs may, at the local school district's discretion, remain eligible for educationally advantageous programs until they obtain scores in the fifth stanine on a standardized test or obtain a comparable score on any other acceptable test.

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For those students not present at the time of regular test administration, or for whom, for any other reason, data do not exist on which to make a determination of eligibility for remediation, an acceptable standardized test should be administered.

Guidelines and Instructions for Comprehensive District Plan...
1980-81 NYSED

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Students who do not achieve the Statewide reference point on the State mandated tests are eligible. Students who score below the 35th NCE on any approved standardized test are also eligible. In the first instance the Statewide tests will be used to determine eligibility in the grades where they are given. In addition, an approved standardized test will be given and the scores used in all grades to determine eligibility. Students might qualify on either or both tests. All eligible students will be served.

Guidelines and Instructions for Comprehensive District Plan...
1980-81 NYSED

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"Maintenance Eligibility" students ... are those students who were identified in previous years, who are no longer eligible according to the criteria in Lines 1 and 3, and have not yet achieved grade level or the 50th Normal Curve Equivalent (NCE). These students should receive a level of service which is designed to maintain their gains.

Guidelines and Instructions for Comprehensive District Plan...
1980-81 NYSED

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ESEA Sec. 124 (b) ASSESSMENT OF EDUCATIONAL NEED. - A local educational agency may receive funds under this title only if it makes an assessment of educational needs each year to (1) identify educationally deprived children in all eligible attendance areas and to select those educationally deprived children who have the greatest need for special assistance; (2) identify the general instructional areas on which the program will focus; and (3) determine the special educational needs of participating children with specificity sufficient to facilitate development of high-quality programs and projects.

P.L. 95-561
11/1/78

> NOTE: In New York State, "children who have the greatest need" has been operationally defined as those who have not achieved the Statewide reference point on State mandated tests and/or who score below the 35th NCE on an acceptable standardized test.

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Part 149.2(b) Pupils with special educational needs shall mean pupils who have scored on their most recent acceptable test two grade levels or more below the norm for the grade level in which such pupils are enrolled in reading or mathematics, or, with respect to pupils in grades two and below, whose most recent acceptable readiness or other test scores predict a serious deficiency in reading or mathematics by the time such pupils have entered grade three, provided that such term shall also mean a locally developed definition of such pupils which has been approved by the Commissioner.

NYS Commissioner's
Regulations
Part 149
7/3/74

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Parental Consent

... there is nothing unique to Title I which requires that a child receive remedial education even if his parents do not want to have such instruction. However, it is equally true that except for the placement of a handicapped child in accordance with Public Law 94-142 and Article 89 of the Education Law, parental approval is not a precondition to placement. Therefore, if the district felt that a particular child needs certain forms of remediation, I see no basis for arguing that the district could not provide such remediation absent parental consent ....

Counsel Memo
NYSED
January 28, 1980

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Sec. 185.15 Services to educationally deprived children.

An LEA that applies for asistance shall include in its application an assurance that, in developing its proposed project, it considered the need for compensatory services for children who --

(a) Received those services under Title I of the Elementary and Secondary Education Act of 1965, as amended, and

(b) Are no longer eligible to receive those services as a result of attendance area changes under a qualifying plan (described in Sec. 185.42).

ESAA - Emergency
School Aid Act Regulations
5/10/80

Terminating Pupil Participation in Remedial Programs

(Exit from program)

Deputy Commissioner's Memo to the Field
NYSED
2/80

The Commissioner's Regulations require schools to provide remedial instruction to pupils who fall below the State reference point on a PEP test or a preliminary competency test. The remedial instruction must be designed to enable the pupil to achieve a satisfactory score on the next required State test. However, if a pupil is provided remediation for a period of time and there is strong evidence that remediation is no longer needed, it is not necessary for a school to continue the pupil in a remedial program until the next required State test. The purpose of this memorandum is to help schools determine when and how a pupil's remedial program may be terminated.

I. General Principles

The sections that follow deal separately with each skill — reading comprehension, writing, and mathematics. However, the following principles apply to terminating remedial programs in any of these skills:

A. Two types of errors can be made in identifying pupils who need remediation. One is to identify for remediation a pupil who does not actually require remediation. The other is to fail to identify a pupil who does require remediation. The latter is the more serious type of error.

By the same token, it is better to provide too much remediation than too little. Any pupil who is identified as needing help should be given as much help as possible, not just the bare minimum needed to obtain a high school diploma. The goal of the competency testing program is to better prepare our children for the demands that will be placed upon them throughout their lives.

B. A pupil who scores below the reference point on a State test must be given some type of remediation. Given two scores, one obtained on a State test and the other obtained on a commercially-published test, the score obtained on the State test must take precedence. An exception may be made only when there is overwhelming evidence that the State test score is not a valid measure because of the conditions under which it was obtained.

C. The pupils identified as needing remediation should be given remediation for at least one semester. There are errors of measurement associated with every test score. Consequently, a pupil

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may score below the State reference point when initially tested and score above the State reference point a short time later, not because of learning but because of measurement errors, regression toward the mean, practice effect, and other phenomena of this type.

Deputy Commissioner's Memo to the Field
NYSED
2/80

D. The State reference points represent satisfactory achievement at a particular stage in a pupil's development. Therefore, if a pupil is given the same test at some later time, the original State reference point no longer has any meaning.

E. If a pupil obtains a high score on a test administered after a period of remediation, the remedial program should not be terminated solely on the basis of the test score. The classroom teacher has other evidence of the pupil's ability, obtained through classroom observation, home assignments, and informal assessment techniques. The decision to end remediation should be supported by all available information and endorsed by the classroom teacher.

F. Parents should be informed when a remedial program is ended, just as they were informed when it began. Written notice, containing the reason for ending the program, is highly desirable. If parents request that remedial programs be continued, every effort should be made to accede to their wishes.

II. Reading Comprehension

The majority of school districts administer the preliminary competency test to eighth grade pupils, and remediation begins in the middle of grade 8 or at the beginning of grade 9, depending upon the testing date. However, pupils are not permitted to take the final Regents competency test until the middle of grade 11. During the intervening period, the preliminary competency test may be readministered to determine the pupil's current reading level.

As indicated in Table 1 of the manual for the preliminary competency test (PCT) in reading, a pupil who obtains a raw score of 70 or above probably will pass the final Regents competency test. This assumes that the score was obtained early in the eighth grade. If the PCT is administered at the end of grade 8 or later as a "posttest" to determine if additional remediation is needed, it is recommended that a raw score of 78 be used as the minimum acceptable score.

Additional forms of the PCT will be made available over the next few years. This will eliminate any practice-effect error that might result from retesting with the same form.

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An additional form of the grade 6 Pupil Evaluation Program (PEP) test -- the Reading Test for New York State Elementary Schools -- will be offered to schools in the spring of 1980. This form of the test, Form B, may be used to assess the reading ability of pupils who were identified as needing remediation at the beginning of grade 6. The test may be administered at the end of grade 6 to help determine whether a remedial program should be continued. It is recommended that pupils obtain a raw score of at least 68 on Form B1 or a raw score of at least 50 on Form B2 before the school considers terminating their remedial programs.

Deputy Commissioner's Memo to the Field
NYSED
2/80

Form B may also be administered at the end of grade 4 to assess the reading ability of pupils who were identified as needing remediation at the beginning of grade 3. In this case, it is recommended that pupils obtain a raw score of at least 57 on Form B1 before the school considers terminating their remedial programs.

At the end of grade 3 and at other points where State tests are not appropriate, commercially-published standardized tests of reading comprehension may be used to assess reading ability. It is recommended that pupils obtain scores in the fifth stanine or higher before the school considers terminating their remedial programs.

III. Writing

As in the case of reading, pupils may not take the final Regents competency test in writing until they have reached the eleventh grade. Therefore, schools must use other measures to assess the writing ability of those who are identified as needing remediation in grades 8 or 9.

Although these pupils may be retested with the preliminary competency test in writing, it should not be necessary to use any published test to evaluate a pupil's writing ability. Teachers are familiar with the three tasks that are measured and have been provided with a list of the twenty-five topics that will be used on Regents competency tests. Therefore, they should be able to prepare tests that are very similar to future Regents competency tests.

These locally-developed tests must be rated in terms of normal progress toward meeting the diploma standard. Pupils in grade 10 should demonstrate writing ability that is very close to that required for passing the Regents competency test. Slightly less should be expected of pupils in grade 9. Thus, in the case of writing, pupils identified for remediation in grades 8 or 9 should continue in remediation until they can demonstrate writing skills judged minimally satisfactory for pupils at their grade level.

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Wherever possible, a pupil's ability to write should be evaluated by at least two experienced teachers of English. Some schools may wish to establish a committee procedure for monitoring the progress of pupils in remedial writing programs. Only when there is clear agreement that remediation is no longer needed should the school consider terminating a remedial program.

Deputy Commissioner's Memo to the Field
NYSED
2/80

IV. Mathematics

Pupils may take the Regents competency test in mathematics as early as the ninth grade and, consequently, there is no preliminary competency test in mathematics. The Regents competency test in mathematics is scheduled for administration each January, June, and August. Therefore, pupils provided remediation after failing the Regents competency test in mathematics should continue in remedial programs until they are able to pass the Regents competency test.

In the lower grades -- 3 through 8 -- commercially-published standardized tests may be used to assess a pupil's ability to understand and use mathematics. It is recommended that pupils obtain scores in the fifth stanine or higher before the school considers terminating their remedial programs.

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SCREENING

NYS Commissioner's
Regulations
Part 117
7/25/80

Section 117.1 Scope of Part. The purpose of this Part is to establish standards for the screening of every new entrant to the schools to determine which pupils are possibly gifted or have a possible handicapping condition in accordance with subdivision six of section 3208 of the Education Law.

117.2 Definitions. As used in this Part:

(a) A pupil who has a possible handicapping condition shall mean a pupil who on the basis of a diagnostic screening shows evidence of being a pupil with a handicapping condition as defined in subdivision (d) of section 200.1 of these Regulations.

(b) A pupil who is possibly gifted shall mean a pupil who on the basis of diagnostic screening appears to meet the definition of gifted and talented as contained in section 142.2 of these Regulations.

(c) New entrant shall mean a pupil entering a New York State public school for the first time, or reentering a New York State public school with no available record of a prior screening.

(d) For purposes of paragraph a of subdivision 6 of section 3208 of the Education Law:

(1) Pupils who score below level two on either the third grade reading or mathematics tests for New York State elementary schools shall mean pupils obtaining a score of 11 or below on the New York State Test in Reading, Beginning Grade 3, Form C, or obtaining a score of 10 or below on the Mathematics Test for New York State elementary schools, Beginning Grade 3, Form C. Those pupils exempted from testing as non-English-speaking shall be examined in the pupils' native language through similar procedures and shall be screened for possible handicapping conditions if resultant scores are comparable to those indicated above.

(2) Students who obtain a comparable percentile score on the Regents Preliminary Competency Test shall mean students obtaining a score of 44 or below on the New York State Preliminary Competency Test in Reading, Form A, or a score of 45 or below on the New York State Preliminary Competency Test in Reading, Form B, or a score of 49 or below on the New York State Preliminary Competency Test in Writing, Forms A or B. Those pupils exemped from testing as non-English-speaking shall be examined in the pupils' native language through similar procedures and shall be screened for possible handicapping conditions if resultant scores are comparable to those indicated above.

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NYS Commissioner's
Regulations
Part 117
7/25/80

(e) Diagnostic screening shall mean a preliminary method of distinguishing from the general population those pupils who may possibly be gifted or those pupils who may possibly have a handicapping condition.

117.3 Diagnostic screening. (a) Each local school district shall develop a plan for the diagnostic screening of all new entrants, pupils who score below level two on either the third grade reading or mathematics tests for New York State elementary schools, and students who obtain a comparable percentile score on the Regents Preliminary Competency Test, and all such new entrants, pupils and students shall receive such screening.

(b) Such diagnostic screening shall be conducted:

(1) by persons appropriately trained or qualified;

(2) in the pupil's native language if the language of the home is other than English;

(3) prior to the school year, if possible, but no later than December 1 of the school year of entry or within 15 days of transfer of a pupil into a New York State public school should the entry take place after December 1 of the school year.

(c) Diagnostic screening shall include but not be limited to:

(1) a health examination by a duly licensed physician, or evidence of such in the form of a health certificate, in accordance with sections 903, 904 and 905 of the Education Law;

(2) certificates of immunization or referral for immunization in accordance with section 2164 of the Public Health Law;

(3) a determination of receptive and expressive language development, motor development, articulation skills, and cognitive development.

(d) The results of the diagnostic screening shall be reviewed and a written report of each pupil screened shall be prepared by appropriately qualified school district staff. Such report shall include a description of diagnostic screening devices used, the pupil's performance on those devices and if required, the appropriate referral.

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(e) A pupil who may have a handicapping condition shall be referred to the Committee on the Handicapped no later than 15 calendar days after completion of such diagnostic screening. Such referral shall be accompanied by the report of such screening.

NYS Commissioner's
Regulations
Part 117
7/25/80

(f) A pupil identified as possibly gifted shall be reported to the superintendent of schools no later than 15 calendar days after completion of such screening. Such referral shall be accompanied by the report of such screening.

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INDIVIDUALIZED PLANS

ESEA I Sec. 129. It is the intent of the Congress to encourage, whenever feasible, the development for each educationally deprived child participating in a program under this title of an individualized educational plan (maintained and periodically evaluated), agreed upon jointly by the local educational agency, the teacher, a parent or guardian of the child, and, when appropriate, the child.

P.L. 95-561
11/1/78

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PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS - GENERAL EDUCATION PROVISIONS ACT Sec. 438. (a) (1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

P.L. 94-482
10/12/76

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;
(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;
(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations -
    (I) respecting admission to any educational agency or institution
    (II) respecting an application for employment, and
    (III) respecting the receipt of an honor or honorary recognition.

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P.L. 94-482
10/12/76

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purposes for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.,

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's educational records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purpose of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials, which -

(i) contain information directly related to a student; and
(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include -

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b) (1), the records and documents of such law enforcement unit which (I), are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

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P.L. 94-482
10/12/76

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without parent's prior consent.

(b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following -

continued

continued

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(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school system in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c)), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents (sic), as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

continued

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Nothing in clause (E) of this paragraph shall prevent a State from futher limiting the number or type of State or local officials who will continue to have access thereunder.

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(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection.

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: PROVIDED, That except when collection of personally identifiable information is specifically authorized by Federal Law, any data collected by such officials, shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1) (A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

continued

continued

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

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(C) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(D) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(E) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(F) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(G) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

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II-F-Records

Individual records with entries by both regular and remedial teachers and other appropriate staff should be maintained for each student. The individual records should be available to both regular and remedial teachers as well as other officials. In addition to a diagnostic profile and the rationale for the material/method selected, the records should include:

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1. Specific learning objectives for the student.
2. Listing of materials and activities in use.
3. Evidence of student's progress.
4. Results of pre- and posttests.
5. Evidence that the student's remedial programs are part of a comprehensive instructional package.
6. Other information considered relevant by teachers.

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149.7 (b) Appropriate individual records of each pupil with special educational needs shall be kept in the school. Records of the operation of each program shall be kept by each school district and submitted whenever required by the commissioner.

NYS Commissioner's
Regulations
Part 149
12/24/80

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PERSONALIZED EDUCATIONAL PLANS

ESEA Title I
Program
Directive
6/18/80

Public Law 95-561 - Title I of the Elementary and Secondary Education Act of 1965 states in Section 129, "It is the intent of the Congress to encourage, whenever feasible, the development for each educationally deprived child participating in a program under this title of an individualized educational plan (maintained and periodically evaluated), agreed upon jointly by the local educational agency, the teacher, a parent or guardian of the child, and, when appropriate, the child."

This section of the law encourages each local educational agency to consider whether it is feasible to develop an individualized educational plan for each student participating in a Title I program. (In Title I programs, these plans may be referred to as Personalized Educational Plans or PEPs).

Those who feel their Title I program can be improved by using a PEP must then decide on the format and content. To assist them, this paper will:

- Establish the purposes of the PEP; and
- Provide a model of possible components of the PEP.

PURPOSE

The major purpose of the PEP is to give general direction to the supplementary learning experiences provided for students participating in Title I instructional programs. It helps educators tailor an educational program to fit the unique characteristics and needs of individual students. Documenting the skill needs of the Title I student helps a teacher choose the most appropriate instructional strategies, techniques, and materials, and identify additional services that may be needed.

Additionally, the PEP may help to prevent conflicting efforts by serving as a basis for coordinating Title I services with those of the regular classroom.

The PEP can also be used as a means of informing parents of the educational status of their child. It can help to communicate the learning goals and objectives of the school to the parents and actively involve them in the child's educational program.

CONTENT

Many educators use an instructional planning process (fig. 1) as a systematic and ongoing method to focus on the educational strengths and weaknesses of individual students. It can also serve to identify some of the components of the PEP.

continued

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Figure 1
The Instructional Planning Process
for developing a Personalized Educational Plan

ESEA Title I
Program
Directive
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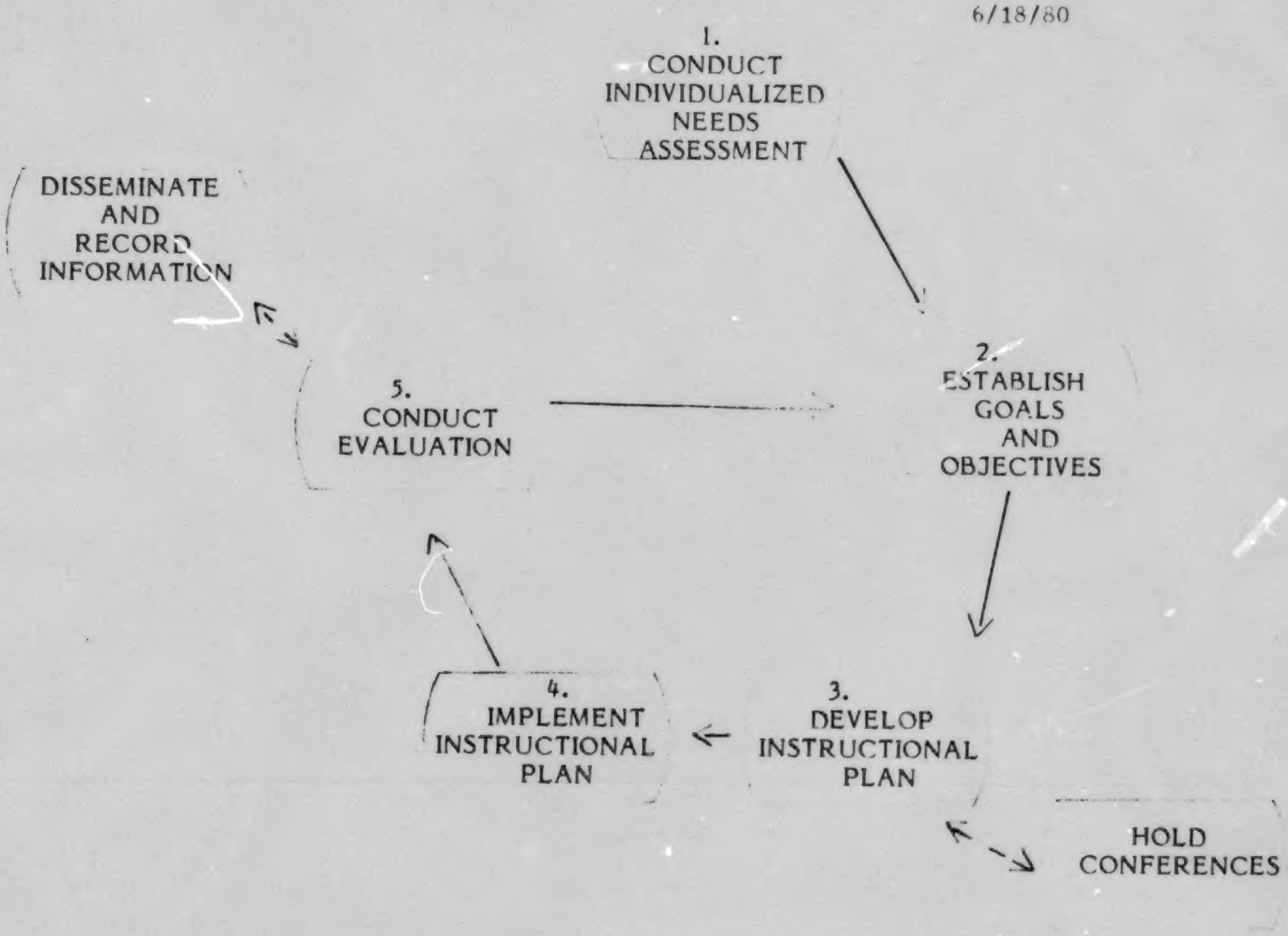
1. CONDUCT INDIVIDUALIZED NEEDS ASSESSMENT
2. ESTABLISH GOALS AND OBJECTIVES
3. DEVELOP INSTRUCTIONAL PLAN
HOLD CONFERENCES
4. IMPLEMENT INSTRUCTIONAL PLAN
5. CONDUCT EVALUATION
DISSEMINATE AND RECORD INFORMATION

Although the format of the PEP and the information to be collected on each student may vary among districts, the following components seem to be important to any successful instructional plan.

continued

continued

GENERAL DATA

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The General Data section should include any identifying information needed by the school. For instance, the name of the school where the student is currently enrolled is needed in the event of transfer later in the year. The date the PEP was developed is needed as a point of reference in evaluating the student's progress. Fig. 2 Sample of General Data Section

Student ______________________ Grade ____ Birthdate __________

Student's Address ____

Parent/Guardian ______________________ Phone ____________

Present School ______________________ Principal ____________

Subject ____

Date Developed __________________________

INDIVIDUALIZED NEEDS ASSESSMENT (Diagnosis)

This component shows the educational performance of the student and how it relates to the array of skills developed for the regular school program. This information may come from a variety of sources such as achievement tests, teacher made instruments, teacher observations, check lists, grades, or information obtained from parents and other knowledgeable persons. It should provide a profile of the student's educational strengths and weaknesses.

Fig. 3 Sample Individualized Needs Assessment Component

Date	Diagnostic Technique	Level of Performance
9-5-79	The "XYZ Text of Basic Skills, Form A	Vocabulary 2.3 Comprehension 1.9
9-6-79	The "X" Test of Sight Vocabulary	Level 2 part 1
9-7-79	Teacher-made comprehension test from level 2 of Basal Reader "Y"	60% correct

continued

continued

GOALS AND OBJECTIVES

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This component should include general goals and specific objectives by subject area for the time period covered by the PEP. The goals might be to improve reading, vocabulary, language development, writing, spelling, mathematics, self-concept or attitudes. They should be listed in order of priority. Within these goals, each objective should state what the child needs to learn and how we will know when he or she has learned it.

Fig. 4 Sample Goals and Objectives Component

GOALS	OBJECTIVES
(1) Improve sight vocabulary	(a) To be able to pronounce orally with 5 sec. exposure per word, the 200 words from the "X" Test of Sight Vocabulary with 90% accuracy. (b) To be able to identify the 200 words from the "X" test of Sight Vocabulary in context with 90% accuracy.
(2)	

INSTRUCTIONAL PLAN

The instructional plan describes what will be done to help the student overcome the learning deficiencies identified in the individualized needs assessment. The goals and objectives have listed what is to be taught. Now the instructional plan says who will teach it, how it will be taught, and what materials will be used. The plan may also call for services such as those provided by the school psychologist, guidance counselor, health services personnel, speech and hearing specialist, or curriculum and resource specialists. Parents may be asked to take part in activities that support their child's instructional plan.

The district may also wish to include a section in the PEP on the role and activities of the parents and student. Sample entries in this section might remind parents to provide a place at home where the student can study regularly, or remind the student to arrive in class on time. Another section might list additional resources and support services needed to carry out the instructional plan.

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Fig. 5 Sample Instructional Plan Component

MATERIAL	METHOD	PERSON RESPONSIBLE
The "X" Work Book II	Supervised Independent Study	Title I Aide
The "X" Word Games	Gaming-Practice	Mother
The "X" Flash Cards	Reinforcement	Peer Tutor

EVALUATION

The evaluation component should chart the student's progress and show how well the PEP works. It draws on the same types of information used to assess the student's needs, including achievement tests, teacher made instruments, teacher observation, check lists, grades, or information obtained from parents and other knowledgeable persons.

The school should give the evaluation results to everyone involved in the student's instructional program. A conference is probably the best way to insure that everybody understands the results and has a chance to comment.

The evaluation component also serves as a basis for developing new goals and objectives and beginning the planning process anew. Each local educational agency decides on the time period covered by the PEP based on grade level, subject matter, and identified needs. However, the greater the time span, the less opportunity there is for making program adjustments. The period covered by the PEP could therefore be from a few weeks to a year.

Fig. 6 Sample Evaluation Component

DATE	EVALUATION TECHNIQUES	RESULTS
12-5-79	Oral identification of the words on The "X" Test of Sight Vocabulary level 2 part 1	95% Accuracy

continued

continued

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SIGNATURES

The local educational agency may ask those who developed the PEP to sign it. This is done to indicate that they are aware of its contents and that they agree on the tasks which have been assigned. The signatures do not mean that the PEP is a legal document.

INITIATING THE PEP

The local educational agency may invovle any number of people in developing the PEP. After the person responsible for Title I instruction initiates the development of the PEP, the following people can make important contributions:

- A representative of the school or district, other than the student's teachers. The principal, assistant principal, or local Title I director would be appropriate.
- The student's classroom teacher(s) and the Title I teacher. If the student has several regular classroom teachers, all of them may not be able to participate. Those who should take part are the homeroom teacher (or the person responsible for the student's curriculum planning) and the teacher responsible for the subject area in which the student receives supplementary instruction.
  - One or both of the student's parents or guardians.
  - The student, if appropriate.
  - Resource or support persons, if needed.

Although it is desirable for these individuals to contribute to the PEP, a failure to do so should not delay the development or implementation of the instructional plan.

DEVELOPING THE PEP

To be effective the PEP does not need to be long or time consuming. The necessary components can easily fit on the back and front of one sheet of paper. Figure 7 illustrates one way this can be done. State and local educational agencies may have developed other formats which best meet the needs of the students to be served. Administrators, teachers, and aides generally will need training in how to develop and use the PEP to make it a valuable educational tool.

continued

continued

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Figure 7
PERSONALIZED EDUCATIONAL PLAN
(Sample Format for ESEA, Title I)

Student ______________ Grade _____ Birthdate ____________
Student's Address ______________________________
Parent/Guardian ______________ Phone ____________
Present School ______________ Principal ____________
Subject ______________________________
Date Developed ____________________

I. INDIVIDUALIZED NEEDS ASSESSMENT

Date	Diagnostic Technique	Level of Performance

II. GOALS AND OBJECTIVES, INSTRUCTIONAL PLAN, EVALUATION
(See reverse side)

III. ADDITIONAL RESOURCES AND/OR SUPPORT SERVICES
(If needed)

IV. PARENTS/GUARDIAN/SURROGATE PARENTS' ROLE AND ACTIVITIES

V. STUDENT'S ROLE AND ACTIVITIES

VI. SIGNATURE OF PEOPLE INVOLVED IN THE DEVELOPMENT OF THE PEP

	Date		Date
(Title I Teacher)		(Parents/Guardian)	
(Regular Classroom Teachers)			
(Other School Personnel)	(Principal)		

continued

continued

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INSTRUCTIONAL PLAN					EVALUATION		
GOALS	OBJECTIVES	MATERIAL	METHOD	PERSON RESPONSIBLE	DATE	EVALUATION TECHNIQUE	RESULTS
	a.						
	b.						
	c.						

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PARENTS INVOLVEMENT

ESEA I Sec. 124 (j) PARENT PARTICIPATION. - A local educational agency may receive funds under this title only if parents of children participating in programs assisted under this title are permitted to participate in the establishment of such programs and are informed of, and permitted to make recommendations with respect to, the instructional goals of the program and the progress of their children in such program, and such parents are afforded opportunities to assist their children in achieving such goals.

P.L. 95-561
11/1/78

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Where bilingual instruction is provided, there should be evidence of participation by non-English-speaking parents, and evidence that notices sent to parents are in their native language.

Guidelines and Instructions for Comprehensive District Plan...
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PARENT ADVISORY COUNCILS

(District Parent Advisory Council)

P.L. 95-561
11/1/78
amended by
P.L. 96-46
8/8/79

ESEA I Sec. 125. (a) ESTABLISHMENT OF ADVISORY COUNCILS. - (1) A local educational agency may receive funds under this title only if it establishes an advisory council for its entire school district which -

(A) has a majority of members who are parents of children to be served by projects assisted under this title, who shall either be

(i) elected by the project area or school advisory councils required to be established by paragraph (2)(A) of this subsection, or

(ii) elected by the parents in such areas;

(B) includes such additional members as may be

(i) elected by the project area or school advisory councils required to be established by paragraph (2)(A) of this subsection, or

(ii) elected by the parents in such areas;

(C) includes representatives of children and schools eligible to be served by, but not currently participating in, programs assisted with funds provided under this title, who shall be elected by the parents in such areas; and

(D) is established in accordance with regulations to be issued by the Commissioner U.S. Secretary of Education which provide alternative models to carry out subparagraphs (A) through (C) of this paragraph.

(School Parent Advisory Council)

(2) (A) A local educational agency may receive funds under this title only if it establishes an advisory council for each project area or project school, except as provided in subparagraph (B), which -

(i) has a majority of members who are parents of children to be served by programs assisted under this title, and
(ii) is composed of members elected by the parents in each project area or project school.

continued

continued

P.L. 95-561
11/1/78
as amended by
P.L. 96-46
8/8/79

(B) In the case of any project area or project school in which not more than one full-time equivalent staff member is paid with funds provided under this title, and in which not more than forty students participate in such programs, the requirements of subparagraph (A) shall be waived.

(C) In the case of any project area or project school in which 75 or more students are served by programs assisted by funds provided under this title, each such project area or project school advisory council, in addition to meeting the requirements of subparagraph (A), shall-

- (i) be composed of not less than 8 members, who shall serve for terms of two years, after which time they may be re-elected;
- (ii) elect officers of the council after it has been fully constituted; and
- (iii) meet a sufficient number of times per year, according to a schedule and at locations to be determined by such council.

(3) Any individual who is a teacher at a school serving a project area or is a parent of a child residing in an eligible school attendance area or attending an eligible school shall be eligible to be elected as a member of the district-wide advisory councils established pursuant to paragraph (1), but nothing in this sentence shall preclude the eligibility of other individuals who are residents in that district. No individual who is a teacher at a project school or a school serving a project area shall be ineligible to be elected as a member of a district-wide or project area or school advisory council on the basis of residency outside such area or district.

(b) RESPONSIBILITIES OF ADVISORY COUNCILS. - Each local educational agency shall give each advisory council which it established under subsection (a) responsibility for advising it in planning for, and implementation and evaluation of, its programs and projects assisted under this title.

(c) ACCESS TO INFORMATION. - (1) Each local educational agency shall provide without charge to each advisory council established by such an agency under subsection (a) of this section and, upon request, to each member of such advisory council-

- (A) a copy of the text of this title,
- (B) a copy of any Federal regulations and guidelines issued under such title, and
- (C) a copy of appropriate State regulations and guidelines issued under such title.

continued

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(2) Each State educational agency shall provide a copy of any report resulting from State or Federal auditing, monitoring, or evaluation activities in any district to the parent advisory council established pursuant to subsection (a) (1) in such district.

P.L. 95-561
11/1/78
as amended by
P.L. 96-46
8/8/79

(d) TRAINING PROGRAMS - Each local educational agency application for funding under this title shall describe a program for training the members of advisory councils established pursuant to subsection (a) to carry out their responsibilities as described in subsection (b). Such training program -

(1) shall be planned in full consultation with the members of such advisory councils;
(2) shall provide each member of each such council with appropriate training materials; and
(3) may permit the use of funds under this title for expenses associated with such training, including expenses associated with the attendance of such members at training sessions.

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- The regulations on parent advisory councils are specific and must be implemented by each and every local school district which operates a Title I, ESEA program.
- Each Board of Education should have on record an accepted resolution endorsing the structure, role and objectives of its Parent Advisory Councils.
- All meetings of Parent Advisory Councils are public meetings and open to the public and must be announced to the public through news media at least seventy-two hours prior to each meeting.
- Minutes must be taken at Parent Advisory Council meetings, consisting of a record of all motions, proposals, resolutions and any other matters acted and/or voted on.

ESEA I State Policies and Federal Guidelines for Education of the Disadvantaged
(selected summary)
NYSED
1978

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NYS Commissioner's
Regulation
Part 154
7/2/73

Section 154.4 Community bilingual education advisory committee. (a) In order to provide more effectively for the coordination of programs under this Part with other educational, social and related programs, the board of education of a school district shall provide for the establishment of a bilingual education advisory committee. Such committee shall consist of persons living within the community, having particular knowledge or experience relating to the educational needs of pupils of limited English speaking ability.

(b) the bilingual education advisory committee shall advise the board of education of a school district at all stages, and with respect to all major policies and decisions concerning the planning, operation and evaluation of programs.

(c) The number and terms of office of members of a bilingual education advisory committee, their manner of selection and their particular qualifications shall be set forth in the district plan.

NOTE: Part 154 governs grants under the Laws of New York State of 1973, Chapter 720.

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PARENTS, INSERVICE FOR

ESEA I, Sec. 125 (e) WORKSHOPS ON PARENTAL INVOLVEMENT. - For each fiscal year for which payments are made to State educational agencies under this title, the Commissioner shall sponsor workshops in the several regions of the United States which shall be designed to assist local educational agencies to work with and provide training to parent advisory councils established under subsection (a) of this section and to facilitate parental involvement in the programs conducted under this title. The workshops shall be planned and conducted in consultation with members of parent advisory councils in the region served by the workshop.

P.L. 95-561
11/1/78

> Note: The Commissioner referred to is now (1980) the U.S. Secretary of Education.

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...Local educational agencies must make every effort to provide training for parent council members at a location within the school district, so that such training may be accomplished without undue delay, and take place at a location convenient to all council members. In certain areas, several districts may wish to provide such training jointly, necessitating travel by council members to a single, central location. Expenses associated with regional or national conferences are not prohibited, but should be paid only in special and unusual circumstances.

House Report
#95-1753
1978
Page 259

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1. The Office of Education will determine, on a case-by-case basis, whether "special and unusual" circumstances exist that would justify the expenditure of Title I funds for out-of-state travel by members of advisory councils to a national or regional conference. This determination will be based on such factors as the following:

   (a) The RELEVANCE of the agenda of the conference to Title I.

   (b) The UNIQUENESS of the subject matter of the conference.

   (c) The TIMING of the conference with regard to key events affecting Title I programs.

   (d) Specific advantages of holding a NATIONAL or regional conference.

2. The Office of Education will inform you of approved national and regional conferences.

ESEA Title I Program Bulletin
Inst. 1210-3
4/16/1979

continued

continued

3. The number of advisory council members from a state attending an approved national or regional conference must be limited. When OE announces its approval of a regional or national conference it will also provide guidance so that each SEA may determine the appropriate number of advisory council members whose attendance at the conference may be paid from Title I funds.

ESEA Title I Program Bulletin
Inst. 1210-3
4/16/1979

4. Your agency should develop a plan for determining how the recommended number of council members will be divided among LEAs in your state.

5. Your agency should plan with the LEAs in your state to have the council members who attend national or regional conferences help train other council members in their own and other LEAs in the state by sharing the information received at those conferences.

6. SEAs should apply the foregoing standards and considerations to the attendance of advisory council members at State conferences.

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PARENTS, NOTICE OF CHILD'S REMEDIATION

103.2 (c) (4) (Pupil Notification)

A pupil who shall be provided remedial instruction, and the parent or guardian of such pupil, shall be notified in writing by the principal of the test results and the plan for remedial instruction.

NYS Commissioner's
Regulations
Part 103
4/30/79

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100.1 (f) (Parent Notification)

...The parent or guardian of a pupil who is to be provided remedial instruction shall be notified in writing, by the principal, of the Pupil Evaluation Program Test results and the plan for remedial instruction, which shall begin no later than the commencement of the school semester after which the test is given.

NYS Commissioner's
Regulations
Part 100
4/30/79

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Notification to the parent/guardian and pupil should occur as soon after the tests are given as possible. If timely, the notice of the test results could be included as part of the student's report card. The principal may wish to inform the parent/guardian and student of the plan for remedial instruction through a statement which is separate from the notice of test results. Such a statement should be prepared in consultation with teachers, counselors, and parents.

Deputy Commissioner's Memo to
the Field
NYSED
4/1979

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I. F. Parents should be informed when a remedial program is ended, just as they were informed when it began. Written notice, containing the reason for ending the program, is highly desireable. If parents request that the remedial programs be continued, every effort should be made to accede to their wishes.

Deputy Commissioner's Memo to
the Field
NYSED
2/1980

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03.41
Page 1 of 1
Compiled July 1980

PARENTS, COMMUNICATIONS IN NATIVE LANGUAGE

All parents of limited English proficiency whose native language is other than English shall be notified in their native language.

NOTE: This refers specifically to remediation needs of children and generally to all school communications.

Deputy Commissioner's Memo to the Field
NYSED
4/1979

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Where bilingual instruction is provided, there should be evidence of participation by non-English-speaking parents, and evidence that notices sent to parents are in their native language.

Guidelines and Instructions for Comprehensive District Plan...
1980-81
NYSED

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ESEA I Sec. 124 (i) TEACHER AND SCHOOL BOARD PARTICIPATION. - A local educational agency may receive funds under this title only if teachers in schools participating in programs assisted under this title, and school boards or comparable authority responsible to the public with jurisdiction over the schools, have been involved in planning for those programs and will be involved in the evaluation thereof.

P.L. 95-561
11/1/78

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II. 5.

Priority should be placed on increasing the number of certified teachers to provide more intensive and individualized instruction to students.

Guidelines for Developing ESEA I/
PSEN Programs
1979-80
NYSED

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NOTE: The following Guidelines also apply to all teachers, whether funded through local, State, or Federal sources - ESEA, PSEN, ESAA, Chapter 720, and all others.

(Q) Must all teachers employed by a local school district to provide instructional services in a project under Title I, ESEA be certified?

ESEA I
(State) Guidelines
June 1971
NYSED

(A) All personnel employed to provide instructional services in a project under Title I, ESEA fall under the same certification requirements as personnel employed by the school district to provide instructional services during the regular school program.

(Q) Must a teacher, employed as a full-time employee of the school district in a project funded under Title I, ESEA, join the New York State Teachers Retirement System?

(A) Such a teacher is required, under Education Law, section 520, to join the retirement system even though such membership may not be desired. Membership is required as long as the teacher is a full-time teacher employed by the district. The source of the teacher's salary is not relevant.

(Q) What is the relationship between Title I, ESEA and the New York State Teachers Retirement System regarding part-time employees?

(A)

1. No individual can be a member of the System unless he is an employee of the school district, i.e., the monies are paid by the school district and the position qualifies under section 501 (4) of the Education Law (instructional services).

continued

continued

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2. The monies received by a member from a school district for part-time employment under a Title I, ESEA program in a position which qualifies under the provision in (1) above must be considered salary for retirement purposes.

3. A person who is not a member of the system and is employed by a school district on a part-time basis in a program under Title I, ESEA in a position which qualifies under the provision in (1) above has the option to become a member of the retirement system. Until this option is exercised, the monies will not be considered salary for retirement purposes.

4. A person who is not a member and is employed as described in (3) above and does not elect to become a member of the system may, if he joins the system at a future date, purchase prior service credit pursuant to the requirements of section 509 of the Education Law for the time employed under the Title I program.

5. The school districts do not have the option to consider salaries earned under Title I programs as salaries earned for retirement purposes. They must comply with the standards set forth in (1), (2), (3), and (4) above.

(Q) What is the relationship between Title I, ESEA and teacher tenure?

(A) The funding of programs under Title I, ESEA does not affect the acquisition of tenure by personnel employed on a full-time basis in the local educational agency. Any teacher employed on a full-time basis by the local school district, in a program funded under Title I, ESEA, acquires tenure in the same manner as if that teacher's salary were paid out of local funds. In other words, the same tenure laws apply to all teachers employed by a local educational agency on a full-time basis. The source of funding of the teacher's salary is irrelevant. Part-time personnel do not acquire tenure.

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Opinion of NYS State Education Department Counsel 3/27/67

1. What happens to a teacher who has tenure in a position and is in a new position under Title I, ESEA at the end of the third year? Does he obtain tenure in a new position?

If the teacher gives instructional services in the area in which he had previously acquired tenure, then that tenure would remain unaffected and no new tenure would be acquired. In this respect, the manner of funding of an instructional program would be irrelevant. If, however, a teacher with tenure in one area were assigned to give instruction in a separate tenure area in a program funded with ESEA, Title I funds, the teacher would acquire tenure in the second area upon completion of the appropriate tenure period.

2. Assume that the teacher has been granted tenure in a position funded under Title I, ESEA and the Board of Education decides that the project should not be implemented for the fourth year. As a result, the teacher has no position. Does the teacher return to his former position?

Where a teacher acquires tenure in an area of instruction given pursuant to a program funded by ESEA, Title I, he does not lose any tenure rights previously acquired in a different area of studies within the local educational system. However, it should be noted that tenure follows the area of instruction, rather than the method of funding underlying the program.

If a teacher continues to give instruction in his own tenure area but in a program funded with federal monies, no new tenure is acquired. Thus, if federal funds are withdrawn, it is not necessarily true that the teacher "has no position", for the manner of funding of a program is irrelevant.

3. Meanwhile, the teacher who occupied the position while the teacher under Title I, ESEA was in a project has been granted tenure. What recourse does the teacher who has tenure previously and received it under Title I, ESEA if the position no longer exists? Does he return to his former position?

If a teacher has acquired tenure in a second area of studies and the need for that position no longer exists, then that teacher would be entitled to placement upon a preferential eligible list for positions in the second tenure area. Section 2510, subdivision 3 of the Education Law provides that a teacher whose position has been abolished must obtain placement upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person has filled. This section has been deemed applicable to all school districts by decisions of the Commissioner of Education and the Courts.

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He would not, however, be entitled to return to the position which he has formerly occupied in the prior tenure area if another teacher has been employed to fill the former position.

Opinion of NYS State Education Department Counsel 3/27/67

4. If he does return to a former position, what happens to the teacher who has been the replacement and who had also received tenure?

Our answer to this question presupposes that both teachers have tenure in the same instructional area and that the teacher with senior service had been assigned within the tenure area to work on a federally funded program. If the federal program is discontinued and one of the tenured positions within the school district has been abolished, the services of the junior teacher shall be discontinued and the teacher with seniority shall be retained in service. The junior teacher, however, would be entitled to placement upon a preferred eligible list as indicated in question three above.

5. Assume that a tenured teacher has been assigned to but has not yet acquired tenure in a new instructional area under an ESEA, Title I program. May such a teacher demand that he be reassigned within his tenure area?

No teacher may be required to function outside of the area in which he has been certified. Accordingly, a teacher who has not yet acquired tenure in the second instructional or administrative area may require reassignment consistent with his license.

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II. B. Professional/Paraprofessional Personnel

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Professional and paraprofessional personnel employed by school districts assigned to the remedial programs are expected to possess certificates/licenses which authorize employment and continued employment. At the elementary school level certification in common branch and/or reading is required. A certificate of continuing eligibility in reading may be applicable. In the secondary schools certification in reading, English or mathematics is required. The specific certification required is dependent upon the grade level assignment and remedial curriculum area.

Bilingual remedial programs in New York City and Buffalo require bilingual licensed teachers in appropriate areas of instruction. In New York City, English as a Second Language (ESL) program staff are required to possess an ESL license.

In bilingual and ESL programs, the staff should be fluent in English and the pupil's native language, have appropriate courses in an approved postsecondary training program, and hold appropriate certification.

Paraprofessional personnel may be employed to assist certified teachers in carrying out duties and responsibilities consistent with the objectives of the proposed program. Only those paraprofessionals holding appropriate State certification as teaching assistants may assist teachers and pupils in activities for the reinforcement of instruction.

Administrative, management, and supervisory staff credentials should be consistent with appropriate certification/licensing requirements reflecting their duties and responsibilities.

Staff supervision should be performed by supervisors who possess certification in the curriculum area being remediated. Supervisory responsibilities should be clearly defined and assigned to a staff member who has the required expertise to manage the program.

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EDUCATIONAL STAFF, QUALIFICATIONS OF PROFESSIONALS

II. 1.

Instruction must be provided by certified teachers.

a. Reading -State certification in reading (K-12) or certificate of continuing eligibility

NOTE: New York City also has a statement on reading certification. See: Personnel Memorandum No. 40, 1979-80 and Regulations of the Chancellor 3/31/80.

b. Mathematics - Elementary - common branch certification
Secondary - state certification in mathematics

c. Writing - Elementary - common branch certification
Secondary - state certification in mathematics

d. Bilingual Instruction - New York City and Buffalo - bilingual license in appropriate areas of instruction

- Rest of State - fluency in both English and the student's native language and State certification as stated in a, b, and c

e. English as A Second Language - Appropriate courses in an approved post-secondary ESL training program; New York City appropriate ESL license.

Guidelines for Developing ESEA I/-PSEN Programs
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Is it possible for a local educational agency to employ, as teachers in the public schools, members of a religious order or sect who wear distinctive religious garb?

A teacher wearing distinctive religious garb should not be employed as a teacher in a public school. This, however, does not preclude the possibility that a member of a religious order or sect may be employed as a teacher in a public school in conjunction with a Title I, ESEA project, provided that the teacher is certified or certifiable, wears no distinctive religious garb of any type, and does not, by his acts as a teacher, promote any denominational doctrine or tenet. Such teachers are to be regarded as employees of the local educational agency.

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Part 80.7 Certificate valid for reading teacher. (a) Preparation. Except as provided in subdivision (b) of this section, a candidate for a certificate as a reading teacher shall meet the requirements of either paragraph (1) or (2) of this subdivision.

(1) Provisional certificate. A provisional certificate, which shall be valid for five years and which shall not be renewable, will be issued as follows:

(i) Completion of an approved program registered by the department. A provisional certificate will be issued upon completion of a graduate program culminating in a master's degree which is registered or approved by the department for the preparation of teachers of reading.

(ii) Alternative completion of requirements. A provisional certificate will be issued upon evidence that the candidate has completed the two-part graduate-level college proficiency examination in reading, nine semester hours of graduate study in reading, a college-supervised practicum in reading, and holds a master's degree from a regionally accredited institution of higher education or from an institution authorized by the Regents to confer such degrees and the programs of which are registered by the department. Three years of paid, full-time experience as a reading teacher on the elementary and/or secondary level may be accepted in lieu of the college-supervised practicum in reading when such experience is verified by the employing school district administrator.

(iii) Interstate agreement on the qualifications of educational personnel. A provisional certificate will be issued to the candidate who has completed a graudate program of preparation culminating in a master's degree from an approved institution of higher education, or who has a master's degree and has attained a regular certificate in a state which has contracted with the State of New York pursuant to Education Law section 3030.

(2) Permanent certificate. A permanent certificate will be issued to a candidate who has completed, in addition to the requirements for the provisional certificate, two years of teaching experience at the elementary and/or secondary level in the area for which he holds a provisional certificate.

(b) Exceptions to stated preparation. (1) A person employed in a position for which no certificate existed prior to September 1, 1978 may be issued a statement of continued eligibility, provided that such person has been employed in such position in New York State for a period of three years within the five years immediately preceding the effective date of this regulation.

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NYS Commissioner's
Regulations
9/1/77

(2) The validity of the statement of continued eligibility shall be limited to the specific area of service for which it is issued, but shall be valid in and transferable to any school district.

(3) The candidate for the statement of continued eligibility shall hold a permanent certificate valid for service in any area or grade level in the public schools of New York.

NOTE: Applies to all reading teachers.

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NOTE: The following is also called Common Branch Certification.

NYS Commissioner's
Regulations 1/1/78

Part 80.15 Certificates valid for teaching in the early childhood, upper elementary grades and early secondary grades. (a) Provisional certificate.

(1) Preparation. (i) For a certificate valid for teaching in the early childhood and upper elementary grades (N-6), the candidate shall have completed a four-year program of collegiate preparation, including: the baccalaureate degree at a regionally accredited higher institution or a higher institution registered by the New York State Education Department; 24 semester hours in the professional study of education, including six semester hours of study in the teaching of reading; and a college-supervised student-teaching experience. Programs registered by the New York State Education Department shall provide evidence that graduates have met the competencies for the teaching of reading promulgated by the department.

(ii) For a certificate valid for teaching in the early childhood, upper elementary grades and an academic subject in the early secondary grades (N-9), the collegiate study shall include, in addition to that required in subparagraph (i) of this paragraph, the academic concentration for which the certificate is issued:

English	30 semester hours
Foreign Language	24 semester hours
General Science	36 semester hours

(This total must include collegiate-level study in at least two sciences - biology, chemistry, physics, earth science)

Mathematics	18 semester hours
Social Studies	30 semester hours

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NYS Commissioner's
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(2) Time validity. The provisional certificate shall be valid for five years from date of issuance.

(b) Permanent certificate. The candidate shall have completed two years of school experience as an elementary school teacher and a master's degree functionally related to the field of teaching service, as defined by the commissioner. The total program of preparation shall include the preparation required for the issuance of the provisional certificate.

(c) Substitution. One year of paid full-time teaching experience on the level for which certification is sought may be accepted in lieu of the college-supervised student teaching, but only when such experience carries the recommendation of the employing school district administrator.

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NOTE: The following applies to Secondary Mathematics and Writing (English) remedial teachers.

NYS Commissioner's
Regulations
1/1/79

Part 80.16 Certificates valid for teaching an academic subject. (Additional statutory authority: Education Law, S3004) (a) Provisional certificate.

(1) Preparation. The candidate shall have completed a four-year program of collegiate preparation, including the baccalaureate degree at a regionally accredited higher institution or by a higher institution approved by the New York State Education Department. The collegiate study shall include:

(i) 12 semester hours in the professional study of education and a college-supervised student teaching experience;

(ii) academic concentration as follows in the subject for which the certificate is issued:

English	36 semester hours
Foreign Language	24 semester hours
Mathematics	24 semester hours
Social Studies	36 semester hours
Science	36 semester hours

(a) A minimum of 15 semester hours of the total must include collegiate-level study in the science or each of the sciences for which certification is sought (biology, chemistry, physics or earth science).

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NYS Commissioner's
Regulations
1/1/79

(b) Certification for teaching general science will be included when the total shows collegiate-level study in at least two sciences (biology, chemistry, physics, earth science).

(c) Certification for teaching mathematics must include a minimum of six semester hours of collegiate-level study of the calculus within the total.

(2) Time validity. The provisional certificate shall be valid for five years from date of issuance.

(b) Permanent certificate. The candidate shall have completed two years of school experience as a secondary academic subject(s) teacher and a master's degree functionally related to the field of teaching service, as defined by the commissioner. The total program of preparation shall include the preparation required for the issuance of the provisional certificate.

(c) Substitution. One year of paid, full-time teaching experience on the level for which the certification is sought may be accepted in lieu of the college-supervised student teaching, but only when such experience carries the recommendation of the employing school district administrator.

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NYS Commissioner's
Regulations
9/1/83

80.9 Certificates valid for teaching bilingual education.

(a) Preparation. The validity of a provisional or permanent certificate issued under this Part may be extended by the commissioner to include bilingual education if the holder of such certificate meets the requirements for both education and practice described in paragraphs (1) and (2), respectively, of this subdivision.

(1) The education required for extending a certificate to include bilingual education shall be as follows:

(i) for holders of a certificate issued under section 80.15 of this Part, the completion within or in addition to the program of preparation prescribed in section 80.15 of twenty-four semester hours of collegiate study at an institution with an approved bilingual education program in the following areas: history and culture of the group which speaks the other language; foundations in bilingual/bicultural education; first language teaching; second language teaching; methodology, materials and evaluation in bilingual education; and bilingualism (applied linguistics, psycholinguistics and sociolinguistics);

(ii) for holders of a certificate issued under sections 80.5, 80.6, 80.7, 80.16, or 80.2 17 of this Part, the completion within or in addition to the program of preparation prescribed in sections 80.5, 80.6, 80.7, 80.16, or 80.17 of fifteen semester hours of collegiate study at an institution with an approved bilingual education program in the following areas: history and culture of the group which speaks the other language; methodology, materials and evaluation in the content area(s) in the other language; and foundations in bilingual/bicultural education.

(2) The practice requirement for extending a certificate to include bilingual education shall be the completion of a college-supervised student teaching experience in bilingual education, except that one year of paid full-time bilingual teaching experience on the level and in the area for which certification is sought may be accepted in lieu of the college-supervised student teaching when such experience carries the recommendation of the employing school district administrator.

(b) Language proficiency. A certificate shall be extended to include bilingual education only if the candidate demonstrates proficiency both in English and in the language of instruction other than English by levels of performance satisfactory to the commissioner on examinations acceptable to the commissioner.

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NYS Commissioner's
Regulations
9/1/83

(c) Interstate agreement on qualifications of education personnel. A provisional certificate may be issued to an applicant who has completed a program of preparation in bilingual education at an approved institution of nigher education or who has attained an initial regular certificate which is valid to teach bilingual education in a state which has contracted with the State of New York pursuant to Education Law Section 3030.

(d) Statement of continued eligibility. (1) A person employed in a position in New York State as a teacher of bilingual education for three of the five years immediately preceding September 1, 1983, may be issued a statement of continued eligibility pursuant to which such person may continue to teach bilingual education without a certificate or extension thereof described in this section, provided such person holds a permanent certificate which is valid for service in any area of certification set forth in this Part.

(2) A statement of continued eligibility shall be limited to the teaching of bilingual education at the grade level and in the subject area for which it is granted, but shall be valid for service in any school district.

(3) Applications for the statement of continued eligibility must be filed in the Department by September 1, 1984.

80.10 Certificate valid for teaching English to speakers of other languages (N-12). (a) Provisional Certificate.

(1) Preparation. The candidate shall hold a baccalaureate degree from a regionally accredited institution of higher education or from an institution authorized by the Regents to confer degrees and programs of which are registered or approved by the department, and shall have completed within, or in addition to, that degree:

(i) Twelve semester hours in professional education to include study in methodology, materials, and evaluation of teaching English to speakers of other languages.

(ii) Twenty-four semester hours of collegiate study including twelve semester hours of study of a language and culture other than English (or the equivalent); study in sociological and anthropological aspects of language; linguistics including English linguistics; the foundations, theory and practice of bilingual/bicultural education.

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NYS Commissioner's
Regulations
9/1/83

(iii) College-supervised student teaching experience in the teaching of English to speakers of other languages, except that one year of paid full-time school experience as a teacher of English to speakers of other languages may be accepted in lieu of the college-supervised student teaching when such experience carries the recommendation of the employing school district administrator.

(2) Time validity. The provisional certificate shall be valid for five years from date of issuance.

(b) Permanent Certificate. The candidate shall have completed two years of school experience as a teacher of English to speakers of other languages and a master's degree in an area functionally related to the field of teaching service, as defined by the commissioner. The total program of preparation shall include the preparation required for the issuance of the provisional certificate.

(c) Interstate agreement on qualifications of educational personnel. A provisional certificate may be issued to an applicant who has completed a program of preparation in teaching English to speakers of other languages at an approved institution of higher education or who has attained an initial regular certificate which is valid to teach English to speakers of other languages in a state which has contracted with the State of New York pursuant to Education Law section 3030.

(d) Statement of continued eligibility. (1) A person employed in a position in New York State as a teacher of English to speakers of other languages for three of the five years immediately preceding September 1, 1983, may be issued a statement of continued eligibility pursuant to which such person may continue to teach English to speakers of other languages without a certificate described in this section, provided such person holds a permanent certificate which is valid for service in any area of certification set forth in this Part.

(2) A statement of continued eligibility shall be limited to the teaching of English to speakers of other languages, but shall be valid for service in any school district.

(3) Applications for the statement of continued eligibility shall be filed in the department by September 1, 1984.

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II. 2.

Use of paraprofessional staff:

a. Whether the paraprofessional works in a classroom funded by tax levy, state or federal funds, supervision and direction must be directly provided on a daily basis by a professional certified in the appropriate area. The professional need not be funded from the same source as the paraprofessional.

b. Inservice training appropriate to the instructional support must be given to paraprofessionals by specialists in the various areas.

c. Reinforcement services provided by the paraprofessional must be documented in the student's folders after review by the supervising professional.

d. Only instructional reinforcement to students and the documentation of those services are authorized activities of paraprofessionals.

Guidelines for Developing ESEA I/-PSEN Programs
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A paraprofessional funded from PSEN is allowed to provide services to tax levy students while the tax levy classroom teacher provides remedial instruction to PSEN eligible students in a well-articulated, coordinated effort.

Letter to Dr. Perry Davis, NYC Board of Education from Maria Ramirez, Assistant Commissioner for General Education and Curricular Services
10/22/79

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Part 80.33 Supplementary school personnel. (a) Teacher aide. (1) A teacher aide may be assigned by the board of education to assist teachers in such non-teaching duties as:

(i) managing records, materials, and equipment;

(ii) attending to the physical needs of children; and

(iii) supervising students and performing such other services as support teaching duties when such services are determined and supervised by teachers.

(b) Teaching assistant.

(1) Description. A teaching assistant is appointed by a board of education to provide, under the general supervision of a licensed or certified teacher, direct instructional service to students.

NYS Commissioner's Regulations
9/29/70

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NYS Commissioner's
Regulations
Part 80.33
9/29/70

(2) Duties. Teaching assistants assist teachers by performing duties such as:

(i) working with individual pupils or groups of pupils on special instructional projects;

(ii) providing the teacher with information about pupils which will assist the teacher in the development of appropriate learning experiences;

(iii) assisting pupils in the use of available instructional recources, and assisting in the development of instructional materials;

(iv) utilizing their own special skills and abilities by assisting in instructional programs in such areas as: foreign languages, arts, crafts, music, and similar subjects; and

(v) assisting in related instructional work as required.

(3) License or certificate required. Any person employed as a teaching assistant shall hold one of the following credentials:

(i) Temporary license. Upon application of a superintendent of schools a temporary license as a teaching assistant may be issued to a person having the qualifications defined in (a) below:

(a) Preparation. The candidate shall have completed a four year high school program or its equivalent. Such study shall be supplemented by training and experience appropriate to the position in question.

(b) The application for this license shall be filed on forms prescribed by the commissioner and shall include the following information: the name and address of the candidate; the candidate's education, related teaching; administrative and/or supervisory experience; occupational and/or practical experience; and other unusual qualifications; a description of the teaching assistant's duties; a description of how the teaching assistant will be supervised; a description of the employing school district's in-service training program for teaching assistants and the professional staff utilizing such personnel and a description of the district's plan for using teaching assistant's.

(c) Time validity. The temporary license shall be valid for one year from date of issuance. No more than two temporary licenses may be issued to the same individual.

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NYS Commissioner's
Regulations
Part 80.33
9/29/70

(ii) Continuing certificate. Upon application of a superintendent of schools a continuing certificate as a teaching assistant may be issued to a person having the qualifications defined in (a) below:

(a) Preparation. The candidate shall have completed six semester hours of appropriate collegiate study in or related to the field of elementary and/or secondary school service at a regionally accredited institution of higher education or at an institution approved by the department. The commissioner may approve alternative preparation as required in this paragraph.

(b) Experience. The candidate shall have completed one year of experience as a licensed teaching assistant or as a certified teacher in an approved school.

(c) Time validity. The continuing certificate shall be valid continuously, except when the holder thereof has not been regularly employed as a teaching assistant in the public schools of New York for a period of five consecutive years, in which case the validity of the certificate shall lapse.

(c) Visiting lecturer.

(1) Upon application of a superintendent of schools a temporary license as visiting lecturer may be issued to a person having unusual qualifications in a specific subject to supplement the regular program of instruction.

(2) The request shall be submitted on forms prescribed by the commissioner and shall include the following information:

(i) the name and address of the candidate;
(ii) the specific subject for which the license is to be issued;
(iii) the institutions attended by the candidate, major subject field, degrees or number of semester hours earned, and dates of degrees;
(iv) the candidate's experience pertinent to the unusual qualifications;
(v) the program to be supplemented, and
(vi) the extent of service to be rendered by the visiting lecturer.

(3) Time validity. The temporary license shall be valid for one year from date of issuance.

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(d) Authorization for supplementary service in areas for which no certificate exists.

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Regulations
Part 80.33
9/29/70

(1) Upon the approval of the Commissioner of Education a permit may be granted to a school district for employment of a qualified person for a position in the public schools for which no certificate currently exists. The Superintendent of Schools applying for such authorization shall submit:

(i) a detailed job description outlining the nature of the position;
(ii) a statement of the qualifications which are deemed necessary for candidates for the position; and
(iii) a listing of the candidate or candidates holding the necessary qualifications and eligible for appointment to the position if the permit is granted.

(2) Time validity. A permit granted pursuant to this section shall be valid for employment in the district for which it is granted for a period not to exceed two years unless further extended by the commissioner for intervals not to exceed five years.

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(q) May teacher aides or other paraprofessionals be employed by a local educational agency to work in schools, both public and private, which do not house a funded Title I, ESEA project or portion thereof?

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(A) If the services of teacher aides and other paraprofessionals are to fall within the proper context of Title I, ESEA, they may not be employed in a vacuum, unrelated to a funded project or portion thereof. All paraprofessionals' services must be directly related to the activity of a certified teacher or other professional employee who is directly involved in the implementation of a funded project.

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EDUCATIONAL STAFF, INSERVICE

Guidelines and Instructions for the Comprehensive District Plan... 1980-81 NYSED

II. D. Staff Development/Training

1. Inservice training of professional and paraprofessional staff, should be given in areas which include but are not limited to:
    a. Understanding the goals of the program
    b. Diagnostic/prescriptive procedures (methods of formulating measurable objectives and learning activities)
    c. Grouping for instruction
    d. Specific techniques for remediation including instructional strategies and methods
    e. Record keeping and preparing student profiles
    f. Use of resource materials
    g. Articulation procedures between compensatory personnel and classroom teachers
    h. Effective use of paraprofessional staff
    i. Methods of working with parents
    j. Methods of teaching students to study
    k. Training of content area teachers to teach basic skills through the Content Areas
2. A comprehensive and continuing inservice training program for members of parent advisory councils should be planned to assist them in carrying out their responsibilities.
3. The professional and the paraprofessional team should participate in the training together.
4. Planning for inservice training should involve teachers, parents, paraprofessionals, and others affected.

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ESEA I Sec. 124 (1) TRAINING OF EDUCATION AIDES. -A local educational agency may receive funds under this title for programs and projects involving education aides, including volunteers, only if it has in effect well-developed plans providing for coordinated programs of training in which education aides, including volunteers, and the professional staff whom they are assisting will participate together.

P.L. 95-561
11/1/78

NOTE: In this context education aides, means teaching assistants.

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II. 4.

Guidelines for Developing ESEA I/-PSEN Programs
1979-80
NYSED

Whenever possible, master teachers to train instructional personnel should be provided.

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May teachers wearing a distinctive religious garb take part of inservice education experience in a classroom of a public school under a Title I, ESEA program?

ESEA I
State Guidelines
June 1971
NYSED

Teachers in a distinctive religious garb may be present in a classroom of the public schools for the purpose of receiving inservice education or training. It is understood that no teaching service of any kind will be performed by such a teacher in the public school.

NOTE: See also Finance Allowable Expenditures 06.20

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EDUCATIONAL STAFF, DUTIES

ESEA I Sec. 134. Notwithstanding any provision of subpart 3 of this part, personnel paid entirely by funds made available under this title may be assigned to certain limited, rotating, supervisory duties not related to classroom instruction, the benefits of which are not limited to participating children under this title. Such duties may include only those to which similarly situated personnel not hired with funds made available under the title are assigned at the same school site, and for which such similarly situated personnel are paid, and may not exceed the same proportion of total time as similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less.

P.L. 95-561
11/1/79

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II. 3.

The full caseload for each full-time teacher paid from ESEA Title I or PSEN should not exceed 50 students. In special circumstances where innovative programs are proposed, other staffing patterns will be considered for approval.

Guidelines for Developing ESEA I/-PSEN Programs
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(Q) Is it permissible for a local educational agency to employ teachers and assign one or more of these to a non-public school for the implementation of a program under Title I, ESEA?

(A) Yes, this practice is in accord with the intentions and provisions of Title I, ESEA.

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PROGRAM, COMPREHENSIVE PLANNING

ESEA I Sec. 124 (f) COORDINATION WITH OTHER PROGRAMS. - (1) A local educational agency may receive funds under this title only if it demonstrates that in the development of its application, it has taken into consideration benefits and services which are or may be available through other public and private agencies, organizations, or individuals. The local educational agency shall also demonstrate that in order to avoid duplication of effort and to ensure that all programs and projects complement each other, it has considered suggestions and offers of assistance made by other agencies which may aid in carrying out or making more effective the program or project for which the application is made.

P.L. 95-561
11/1/78

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Part 149.3 (b) Nothing in this Part shall be construed to prevent the use of funds obtained from other sources in the planning, implementation, or evaluation of locally administered educational programs for pupils with special educational needs, which may include expansion of existing programs which are consistent with the purpose of this part. If Federally or privately funded programs in a school district require matching with local funds, such district may claim the amount of State aid which is attributable to pupils with special educational needs as local funds, provided that such programs are operated in accordance with the provisions of this part.

NYS Commissioner's
Regulations
Part 149
8/24/80

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ESEA I Sec. 124 (b) ASSESSMENT OF EDUCATIONAL NEED. - A local educational agency may receive funds under this title only if it makes an assessment of educational needs each year to (1) identify educationally deprived children in all eligible attendance areas and to select those educationally deprived children who have the greatest need for special assistance; (2) identify the general instructional areas on which the program will focus; and (3) determine the special educational needs of participating children with specificity sufficient to facilitate development of high-quality programs and projects.

P.L. 95-561
11/1/78

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ESEA I Sec. 124 (i) TEACHER AND SCHOOL BOARD PARTICIPATION. - A local educational agency may receive funds under this title only if teachers in schools participating in programs assisted under this title, and school boards or comparable authority responsible to the public with jurisdiction over the schools, have been involved in planning for those programs and will be involved in the evaluation thereof.

P.L. 95-561
11/1/78

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P.L. 95-561
11/1/78

ESEA I Sec. 124 (j) PARENT PARTICIPATION. - A local educational agency may receive funds under this title only if parents of children participating in programs assisted under this title are permitted to participate in the establishment of such programs and are informed of, and permitted to make recommendations with respect to, the instructional goals of the program and the progress of their children in such program, and such parents are afforded opportunities to assist their children in achieving such goals.

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New York State
Assistant Commissioner's Memo to
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- Comprehensive planning is required for the coordinated use of ESEA Title I and PSEN.
- Only one application package is to be submitted for all aspects of the program to be conducted during the school year from September 1, 1979 to June 30, 1980. (A memorandum describing ESEA Title I Summer 1979 procedures has already been mailed.)

Final approval of the 1979-80 project application depends on the following criteria:

- ESEA Title I and PSEN are shown to be parts of a comprehensive plan which integrates all services and all funding sources to serve the needs of all educationally disadvantaged students.
- Sound approaches to program design which go beyond total reliance on pullout programs are used. Fragmented programs will not be approved.
- The content of the application is consistent with federal and State statutes and regulations governing ESEA Title I and PSEN. Special attention will be given to the involvement of parents.
- There is evidence of planning at the building level and the involvement of principals, teachers, parents, and other appropriate parties in the planning process.
- All required reports from the previous year have been submitted in a timely and acceptable manner.
- The program application information is consistent with the program priorities of reading, writing, mathematics, and bilingual instruction to pupils of limited English speaking ability.

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II. A. Planning

Guidelines and Instructions for the Comprehensive District Plan...
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NYSED

1. Each building should have a planning committee. The membership of the planning committee should include the principal, teachers, parents, other administrators, nonpublic school representatives, and other appropriate personnel. The committee should have responsibilities for planning and evaluating the programs.

2. A districtwide planning committee should also be organized with membership from each building planning committee.

3. Planning should reflect procedures to:

   a. Identify pupil needs and rank needs by priority.

   b. Identify training needs of staff and parents.

   c. Identify and select eligible public and nonpublic school pupils in need of assistance.

   d. Develop measurable objectives and specific activities to meet the needs identified in each component.

   e. Specify summative and formative evaluation procedures which include feedback to appropriate parties in order to improve the program on a regular basis.

4. Indicate how local, ESEA Title I, and PSEN resources formulate a comprehensive and coordinated plan to address the needs.

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II.-C-8. Building Level Focus

Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

Research demonstrates that improved pupil achievement occurs consistent with the degree of participation by building principals and teachers in the development, implementation, and evaluation of remedial programs in their building. Although the application reflects information in the district aggregate, it is expected that the same information is available in each building and that the principal and staff are fully knowledgeable of the remedial program objectives, instructional methodology, and delivery system. It is expected that they be involved in the decisions concerning the program in their building. The principal must also exercise administrative and management responsibilities to assure that remedial instruction is an integral component of the total school curriculum.

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Monitoring of these programs by the State Education Department staff will focus on individual building activities and implementation.

In the project narrative the names of the school buildings that will implement all or part of the program as described should be listed.

Guidelines and Instructions for the Comprehensive District Plan...
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NYSED

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S185.14 Coordination of Federal Funds

(a) An LEA that applies for assistance under the Act shall coordinate the use of funds it receives under any other law of the United States with funds it receives under the Act to the extent consistent with that other law.

(b) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

ESAA - Emergency School Aid Act Regulations
5/16/80

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II-C-7. Summer School Programs

Summer school programs should be planned as an integral part of a regular school year program. The summer program may precede the regular school year or follow it. The summer school program may be designed to maintain pupil gains achieved during the school year and may also provide for new curriculum and remedial activities for some pupils with particularly complex basic skills needs.

Guidelines and Instructions for the Comprehensive District Plan
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NYSED

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PROGRAM, SIZE, SCOPE AND QUALITY

P.L. 95-561
11/1/78

ESEA Sec. 124 (d) SUFFICIENT SIZE, SCOPE, AND QUALITY. - A local educational agency may use funds received under this title only for programs and projects which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served, and to this end such programs and projects must involve an expenditure of not less than $2,500, except that a State educational agency may reduce such $2,500 requirement for a local educational agency if it determines that it would be impossible, for reasons such as distance or difficulty of travel, for such local educational agency to join effectively with other local educational agencies for the purpsoe of meeting the requirement.

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PROGRAM, CONTENT

The areas of reading, writing, mathematics, bilingual and English as a second language will continue to be the program priorities for the use of ESEA Title I/PSEN funds.

Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

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ESEA I Sec. 124 (k) SUSTAINING GAINS. - A local educational agency may receive funds under this title only if, in developing programs to be assisted under this title, the local educational agency will give due consideration to the inclusion of components designed to sustain the achievements of children beyond the school year in which the program is conducted, through such means as summer programs and intermediate and secondary level programs.

P.L. 95-561
11/1/78

ESEA I Sec. 124 (l) TRAINING OF EDUCATION AIDES. -A local educational agency may recieve funds under this title for programs and projects involving education aides, including volunteers, only if it has in effect well-developed plans providing for coordinated programs of training in which education aides, including volunteers, and the professional staff whom they are assisting will participate together.

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100.1 (f) Pupils who score below the designated Statewide Reference Point in the third grade Pupil Evaluation Test shall be provided appropriate remedial instruction designed to enable them to score above the Statewide Reference Point on the sixth grade Pupil Evaluation Program Test. Pupils who score below the designated Statewide Reference Point on the sixth grade Pupil Evaluation Program Test shall be provided appropriate remedial instruction designed to enable them to score above the Statewide Reference Point on the preliminary competency tests and/or pass the Regents Competency Test in mathematics.

NYS Commissioner's
Regulations
Part 100
3/2/79

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103.2 (c) Remedial instruction.

(1) Regents preliminary competency tests in reading and writing shall be administered to pupils in grade 8 or 9, except those pupils who, in grade 6, obtained scores at or above the 1966 statewide median on the Pupil Evaluation Program tests, or at or above the nationwide median on nationally standardized basic skills tests administered in grade 8 or 9 in the respective basic skill areas. Pupils who score below the designated statewide reference point on one or more of the preliminary competency tests shall be provided appropriate remedial instruction designed to enable them to pass the above required Regents competency tests by the time they are otherwise qualified to graduate.

NYS Commissioner's
Regulations
Part 103
3/2/79

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(2) Pupils in grades 9 or above who fail the Regents Competency Test in Mathematics shall be provided appropriate remedial instruction designed to enable them to pass the Regents Competency Test in Mathematics by the time they are otherwise qualified to graduate.

NYS Commissioner's
Regulations
Part 103
3/2/79

(3) Pupils who fail the Basic Competency Tests in Reading, Writing or Mathematics shall be provided appropriate remedial instruction designed to enable them to pass the Basic Competency Tests by the time they are otherwise qualified to graduate.

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149.2 (c) Educationally advantageous program shall mean an instructional program in reading writing, and/or mathematics, using bilingual methodology where appropriate, which has been designed to include the following:

NYS Commissioner's
Regulations
Part 149
12/24/80

(1) specific pupil learning objectives to provide significant improvement of pupil educational deficiencies;

(2) written documentation of activities and services which are designed to achieve learning objectives for those pupils in need of remedial instruction;

(3) evaluation procedures which clearly measure the effects of activities and services on the pupils participating in the remedial program; and

(4) expenditures of aid for pupils with special educational needs which are directly related to program activities and services specified in the district plan required by Section 149.4 of this Part.

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Note: The form prescribed for the District Plan for the 1980-81 school year and thereafter, is combined with the comprehensive plan for remediation and application for ESEA Title I and PSEN funding.

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NYS Commissioner's
Regulations
Part 149
12/24/80

Part 149.4 District plan. Each school district which receives an apportionment of State aid for pupils with special educational needs shall prepare and submit to the commissioner acceptable plans describing the use of such apportionment, prior to September 1, 1974, and on or before September 1 every third year thereafter. Each district plan shall be in a form prescribed by the commissioner, shall constitute the comprehensive project application for remedial instruction, shall be consistent with the provisions of this Part and sections 100.1 (f) and 103.2 (c) of this Chapter and shall include, but need not be limited to, the following:

(a) number and grade span of pupils served by planned activities;

(b) priority needs, and the method by which such needs were identified;

(c) program objectives

(d) descriptions of program activities;

(e) the method to evaluate the extent to which the objectives of the program have been achieved, which shall include a pre and post assessment of the academic achievement of the pupils served by the program;

(f) the budget for the expenditure of such apportionment;

(g) the date on which such plan was adopted by the board of education;

(h) a description of how other available funds will be coordinated with this special apportionment to provide a unified comprehensive program of remedial instruction for all eligible pupils in the district.

149.5 Annual amendment of plan. Prior to September 1 of each year, school districts shall submit, on forms prescribed by the commissioner, information which amends the approval three year district plan to reflect any and all program and budget changes.

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C. Programs

1. Compensatory instruction should be provided within the classroom through tutorial or specialized instruction or through tutorial or small group instruction outside the classroom setting.

Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

2. Whether services are provided in the regular classroom or in resource rooms or learning laboratories outside the regular classroom, specify:

NOTE: "Resource room" and "resource teacher" as used here DO NOT refer to Special Education for the handicapped, but rather, to Remedial Education for the educationally disadvantaged.

   a. How the resource teacher and the regular classroom teacher coordinate instructional services.

   b. The time scheduled for the compensatory educational personnel and the regular classroom staff to plan and confer on pupil achievement.

   c. How parents are informed of student's performance.

3. Methods and materials should supplement and reinforce those used in the basic program.

4. Instruction should be based on the student's needs diagnosed through an approved system of formal and informal testing.

5. Diagnostic data, including test results and informal evaluations, and a program prescription should be maintained for each student.

6. Individual records with entries by both regular and remedial teachers need to be maintained for each student. The individual records should be available to both regular and remedial teachers. In addition to a diagnostic profile and the rationale for the material/method selection, the records should include information such as:
   a. Specific learning objectives for the student.
   b. Listing of materials and activities in use.
   c. Evidence of student's progress.
   d. Results of pre- and posttests.
   e. Evidence that the student's remedial programs are part of comprehensive instructional package.

PROGRAM, ONSET OF REMEDIATION

The areas of reading, writing, mathematics, bilingual and English as a second language will continue to be the program priorities for the use of ESEA Title I/PSEN funds.

Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

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103.2 (c) (4)

Remedial instruction provided as a result of a pupil's performance on the preliminary competency tests administered in the Spring semester of 1979 shall begin no later than the beginning of the Fall semester of 1979. The remedial instruction provided as a result of a pupil's performance on the preliminary competency tests administered in the Fall semester of 1979, and thereafter, shall begin no later than the Spring semester following the test administration. Such instruction provided as a result of a pupil's failure to pass the Basic Competency Tests or the Regents Competency Test shall begin with the Spring semester if such tests were administered in January, or no later than the following semester if such tests were administered in June or August.

NYS Commissioner's Regulations
Part 103
3/2/79

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Remedial instruction provided as a result of the Pupil Evaluation Program tests at the third and sixth grade levels should begin no later than the commencement of the school semester after that in which the test is given.

NYS Deputy Commissioner's Memo to the Field
4/1979

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§10. Special reading programs. In addition to apportionments otherwise provided by section thirty-six hundred two of the education law, there shall be paid to the school district of a city with a population of one million or more an amount equal to twelve dollars multiplied by the number of pupils with special educational needs as defined in paragraph (e) of subdivision one of such section for the school year commencing July first, nineteen hundred seventy-nine for the purpose of improving reading performance. In no event shall such amount paid exceed five million dollars in such school year. Such amount paid shall be allocated by the department to the boroughs within such city in relation to the number of such pupils with such special educational needs within each borough. All pupils attending schools in a borough shall be deemed to reside in such borough. Of the moneys so allocated, the school district shall make payments to schools within such boroughs for instruction, instructional supplies, materials and equipment for the purpose of improving reading performance. An interim report in a form to be prescribed by the commissioner shall be submitted by such school district to the department explaining the use of such funds on or before February first, nineteen hundred eighty, and a final report in a form similarly prescribed shall be submitted by such school district to the department on or before September first, nineteen hundred eighty. The department shall submit an interim report of the use of such funds to the governor and to the legislature on or before March first, nineteen hundred eighty, and a final report on the use of such funds on or before December first, nineteen hundred eighty. Such departmental interim report shall include recommendations concerning methods of improving the teaching of reading, including in-service training programs and teacher reading resource centers.

New York State
Education Law
Section 3602 as
amended 1978 and
by Chapter 53 of
the Laws of 1979
Sec. 23

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Guidelines and Instructions for the Comprehensive District Plan...
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A. Reading

1. Small groups for corrective reading should be composed of no more than eight students.

2. Whether in the classroom or in another setting, supplementary instruction should be provided for at least 30 minutes no less than three times a week.

3. Instructional materials and methods appropriate for each student must be based on the diagnostic data. Selections should be determined by the student's:

    a. Instructional reading level.

    b. Accuracy in word recognition at that level (recommended 90 percent accuracy).

    c. Comprehension of content at that level (recommended 75 percent accuracy).

    d. Specific skills, strengths, and weaknesses at that level of instruction, i.e., ability to visualize situations, summarize content read, draw conclusions, use study skills and relate the concepts to those already known.

    e. Interest in content.

    f. Ability to finish the assignment within reasonable time and to cope with the material.

4. Title I and PSEN teachers of reading must be certified in reading or hold a certificate of continuing eligibility as reading teachers.

5. Regular classroom and supplementary instruction should be complementary and constitute a consistent comprehensive approach to the teaching of reading.

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B. Writing

Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

Eligible students are those who fail to achieve the statewide reference point on state mandated tests. Where no test scores are available, a districtwide uniform system based on other test scores, teacher judgment, history of classroom performance, and other predictors of student's probable success on a Statewide test, are to be used.

The first step toward achieving maximum quality in writing programs is defining writing as a process. Writing is the process of selecting, combining, arranging, and developing ideas in effective sentences, paragraphs, and/or longer units of discourse. The process requires the writer to cope with a number of variables: method of development (narrating, explaining, describing, and persuading); tone (from very personal to quite formal); form (from a limerick to a formal letter to a long research report); purpose (from discovering and expressing personal feelings and values to conducting the impersonal business of everyday life); possible audiences (oneself, classmates, a teacher, the world). Learning to write well involves developing increasing skill and sensitivity in selecting from and combining the aforementioned variables to shape particular messages. It also involves learning to conform to conventions of the printed language appropriate to the age of the writer and to the form, purpose, and tone of the message.

Beyond the pragmatic purpose of shaping messages to others, writing can be a means of self-discovery, of finding out what we believe, know, and cannot find words or circumstances to say to others. Writing can be a deeply personal act of shaping an individual's perception of the world and that person's relationships to people and things. Writing serves the public and personal needs of students, and it demands the attention of all teachers.

The following guidelines should be used in developing a remedial writing program. Not all aspects apply to all students. Care should be taken to develop a program that responds to the needs of students.

1. There should be evidence that knowledge of current theory and research in writing has been sought and applied in developing the writing program.

2. Whether in the regular classroom or another setting, the elementary pupil should receive remedial instruction in writing at least three times a week for periods of at least 40 minutes each time.

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Guidelines and Instructions for the Comprehensive District Plan...
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NYSED

3. The secondary pupil should receive remedial instruction in writing at least three times a week for periods of at least 40 minutes. Time should be allowed (where appropriate) for long term writing assignments. Time should be shared in a comprehensive mode with other language arts remedial programs.

4. Remedial writing groups should be composed of no more than eight students. Students should be subgrouped according to their needs.

5. The development of writing skills should be based on complete pieces of writing in all modes of discourse (poems, stories, notes, summaries, letters, reports, journals, dramatic scripts, all types of essays).

6. Teachers should evaluate the writing of students on an individual basis, by commenting specifically on each writing assignment and by assigning a rating when practical.

7. Instructional materials and methods appropriate for each student are to be based on diagnostic data and should include emphases on clarity, content, spelling, mechanics, and usage as integral parts of a writing assignment.

8. The following individual records should be maintained for each remedial writing student. In addition to a diagnostic profile, records should include:

   a. representative assignments of various discourse modes written by the student, with the teacher's evaluation.

   b. assignments written which demonstrate that a student has mastered a particular discourse mode.

   c. a sample of each type of assignment given to a student during the program.

   d. a description of materials and activities included in the program.

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9. The programs should meet the following instructional objectives:

   a. remedial instruction should be devoted to all aspects of the writing process: class discussion and other ways of preparing students to know what they are going to write about; writing the first draft; revising the first draft; and editing for omitted words, misspellings, and other errors.

   b. instruction should include (a) developing and expressing ideas and (b) using the conventions of edited American English.

   c. depending on the student's needs, writing should involve a variety of forms such as essays, notes, summaries, poems, letters, stories, reports, scripts, and journals.

   d. students should write for a variety of audiences, including themselves, classmates, teachers, and the community, so that they may learn to vary their approach according to their audience.

   e. students should develop facility in dealing with the conventions of edited American English, with primary emphasis on such supportive skills as spelling, handwriting, punctuation, and grammatical usage as an integral part of the total writing process.

Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

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C. Mathematics

In planning and designing a remedial mathematics program, the following guidelines should be used:

Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

1. For each work session, there should be a maximum of eight pupils. If the program is designed to use hardware, such as computer assisted instruction, a larger group is permissible with State Education Department approval.

2. Whether in the regular classroom or another setting, the elementary pupil should have remedial instruction at least three times per week, with a minimum of 30 minutes per session. At the secondary level, remedial instruction should be scheduled for at least 90 minutes per week.

3. Instructional materials and methods for each student should be based on diagnostic evaluation and should include audio, visual, and manipulative materials in support of paper and pencil activities.

4. Remedial mathematics instruction should provide a balanced, comprehensive program including development of skills in computation, concepts, and problem solving.

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PROGRAM, BILINGUAL EDUCATION AND ENGLISH AS A SECOND LANGUAGE

Guidelines and Instructions for Comprehensive District Plan...
1980-81
NYSED

D. Bilingual Education and English as a Second Language (ESL) Programs

Students of "limited English proficiency" are those individuals whose native language is a language other than English or who come from environments where a language other than English is dominant, and who have difficulty in speaking, reading, writing, or understanding the English language, which prevents them from succeeding in classrooms where the language of instruction is exclusively English.

Bilingual programs, designed for students of limited English proficiency, use two languages, the student's native language and English, as mediums of instruction. English and native language remediation in reading, writing, mathematics, and intensive English as a Second Language instruction may be funded from ESEA Title I and/or PSEN. Other aspects of bilingual education must be funded from other sources.

1. The level of instruction within the programs should vary according to the instructional needs of students of limited English proficiency. Three factors should be considered in program development:

    a. Age of student should be considered in determining grade placement and appropriate level of instructional materials and activities.

    b. General level of language achievement, based on prior experience with both native or English languages should be considered.

    c. Level of English proficiency, as measured by a standardized test of Oral Production, Aural Understanding, Reading, and Writing should also be considered.

2. The following three levels can serve as a guide to program design for varying levels of proficiency among eligible students:

    a. The first level includes students who have little or no English proficiency, generally those who score at or below 23 NCE on tests of English proficiency. At the elementary level, the program for these students should include bilingual instruction, i.e., English and native language. in language arts and instruction in other content areas in either English or native language, as appropriate, based on language proficiency.

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Guidelines and Instructions for the Comprehensive District Plan...
1980-81
NYSED

At the secondary level, the program should include intensive instruction in English as a Second Language and instruction in other content areas in either English or native language, as appropriate. Only the remedial and ESL aspects of the program may be funded through ESEA Title I and/or PSEN.

b. The second level generally includes those students who score above the 23 NCE but below 35 NCE on tests of English proficiency. Programs for these students are similar to those described above but should include remedial/supplementary instruction in the priority areas of reading, writing, and mathematics for those students who score consistently below 35 NCE in these areas. Only the remedial and ESL aspects of the program may be funded through ESEA Title I and/or PSEN.

c. The third level is designed for maintenance of gains, and generally includes students who are approaching a higher degree of English language proficiency and who score on tests of English Language Proficiency below 50 NCE. Programs for these students should include instruction in English in the priority areas of reading, writing, and mathematics, with supplementary tutorial use of native language instruction as necessary for comprehension of the subject matter involved. Instruction in English as a Second Language should be continued. Only the remedial and ESL aspects of the program may be funded through ESEA Title I and/or PSEN.

3. Whether in the regular classroom or another instructional setting, reading, writing, and/or mathematics instruction in the native language (depending on the student's needs) should be given for a minimum of five 30-minute periods a week.

4. Whether in the regular classroom or another setting, ESL instruction should be given for a minimum of five 30-minute periods a week.

5. Instructional materials should be in the appropriate language of instruction.

6. Native language instruction should be evaluated by a test in the native language. English language instruction should be measured by an ESL test.

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7. Evidence should be provided that the instructional staff assigned to teach in the native language has native language fluency and those assigned to teach ESL are fluent in English and trained to teach ESL.

8. Until State certification for bilingual education and English as a Second Language is developed, only professionals certified in appropriate disciplines and proficient in both English and the child's language should provide instruction. In New York City and Buffalo, appropriate licenses must be held.

NOTE: The Regents have establish certification for Bilingual and ESL Teachers, July 25, 1980. See Section 04.10 of "CLPs".

9. ESEA Title I and PSEN inservice training should include bilingual/ESL staff development where appropriate.

10. Program objectives should be stated for the specific language and discipline involved.

11. All notifications to parents of limited English proficiency must be provided in the parent's native language.

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New York State Education Law Section 3204 as amended by Chapter 1052 Laws of 1974

2. Quality and language of instruction; text-books. Instruction may be given only by a competent teacher. In the teaching of the subjects of instruction prescribed by this section, English shall be the language of instruction, and text-books used shall be written in English, except that for a period of three years, which period, may be extended by the commissioner with respect to individual pupils, upon application therefor by the appropriate school authorities, to a period not in excess of six years, from the date of enrollment in school, pupils who, by reason of foreign birth, ancestry or otherwise, experience difficulty in reading and understanding English, may, in the discretion of the board of education, board of trustees or trustee, be instructed in all subjects in their native language and in English. Instructions given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides.

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2. a. Bilingual instruction in schools.

New York State Education Law Section 3204 as amended by Chapter 1052 Laws of 1974

1. The governing board of any school district is hereby empowered to determine the circumstances and necessity wherein instruction shall be given bilingually. The said governing board shall design the necessary procedures and acquire the necessary training materials and equipment to meet the special educational needs of children of limited English-speaking ability through programs designed to accomplish the following:

a) bilingual education;

b) to impart to students a knowledge of the history and culture associated with their language;

c) to establish closer cooperation between the school and the home;

d) to provide early childhood educational programs related to the purposes of this section and designed to improve the potential for profitable learning activities by children;

e) to provide adult education programs related to the purposes of this section, particularly for parents of children participating in bilingual programs;

f) to provide programs designed for dropouts or potential dropouts having need of bilingual programs;

g) to provide programs to be conducted by accredited trade, vocational or technical schools; and

h) to provide other activities deemed desirable to further the purposes of this section.

2. Any duly authorized local educational agency or agencies is hereby empowered to make application for any grant or grants in futherance of this section under Title VII Public Law 90-247 as enacted by the United States Congress January second, nineteen hundred sixty-eight.

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Chapter 720 New York State Education Law 6/11/73

In relation to establishing and implementing programs in transitional bilingual education and making appropriations therefor

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The sum of one million five hundred thousand dollars ($1,500,000), or so much thereof as may be necessary, is hereby appropriated to the education department out of any monies in the state treasury in the general fund to the credit of the local assistance fund not otherwise appropriated for its expenses, including personal service, maintenance and operation for programs in transitional bilingual education in the recognition of the educational needs of children of limited English-speaking ability.

2. The commissioner of education shall promulgate rules and regulations for the development, implementation, operation and financing of such programs subject to approval of the director of the budget.

3. This act shall take effect on the first day of July, nineteen hundred seventy-three.

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PART 154
TEMPORARY APPORTIONMENT FOR PUPILS OF LIMITED ENGLISH SPEAKING ABILITY

New York State Commissioner's Regulations Part 154 7/2/73

Section 154.1 Scope of Part. The purpose of this Part is to effectuate the Legislative intent to provide special State aid for locally administered programs for pupils of limited English speaking ability because they come from environments where the dominant language is other than English, and to establish standards for the best possible use, from an educational standpoint, of the funds made available by the Legislature for this purpose. No such funds shall be used for any purpose without the approval of the commissioner in accordance with the provisions of this Part.

Section 154.2 Definition. For the purpose of this Part, students of limited English speaking ability are defined as students who have special educational needs because their dominant language is not English.

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New York State
Commissioner's
Regulations
Part 154
7/2/73

Section 154.3 District applications. (a) Each school district applying for a grant under this Part shall submit a formal request on forms provided by the department. Such requests shall be submitted not later than July 1 of each year for programs to be conducted during the following school year. The commissioner may waive this time limit under extraordinary circumstances.

(b) The application shall set forth the following information with respect to each program for which a grant is requested:

(1) The number of pupils of limited speaking ability to be benefited by the program.

(2) The nature of their special educational needs.

(3) The specific goals of the program with respect to the anticipated plan for achieving total development of each child.

(4) The qualifications of the professional and auxiliary staff, whether employed full or part-time.

(5) Indication that sufficient and appropriate equipment and materials will be provided.

(6) The manner in which the program is to be administered, supervised and staffed to insure the health, education, and welfare of children, including long range planning for continued progress of children, inservice and parent involvement and such other services as may be necessary.

(7) The provisions made for continuing evaluation of the program.

(8) THE PROPOSED BUDGET FOR THE PROGRAM. This shall indicate in detail the manner in which funds are expected to be received and disbursed, including all funds used in connection with the program whether appropriated or provided by the State, Federal or local government, or by public agencies, private persons or the school district itself.

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New York State
Commissioner's
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Part 154
7/2/73

(9) The measures which have been taken within the community, with interested citizens and groups, to make maximum effective use of citizen participation and involvement in the development and operation of programs, and to assure that the program will be coordinated with, and not a duplication of other efforts to assist pupils of limited English speaking ability, and is the best available use of the funds to meet the purpose of this Part for the greatest concentration of pupils of limited English speaking ability.

(10) Any other information required by the department relative to the planning, administration, funding or evaluation of the program.

(c) The district plan may provide for the expansion of existing programs which meet the purposes of this Part, but may not provide for the substitution of funds allotted pursuant to this Part for funds otherwise available or previously available for the same purpose, except for programs previously funded by Federal or State categorical grants which are no longer available for this purpose.

Sec. 154.4 Community bilingual education advisory committee. (a) In order to provide more effectively for the coordination of programs under this Part with other educational, social and related programs, the board of education of a school district shall provide for the establishment of a bilingual education advisory committee. Such committee shall consist of persons living within the community, having particular knowledge or experience relating to the educational needs of pupils of limited English speaking ability.

(b) The bilingual education advisory committee shall adivse the board of education of a school district at all stages, and with respect to all major policies and decisions concerning the planning, operation and evaluation of programs.

(c) The number and terms of office of members of a bilingual education advisory committee, their manner of selection and their particular qualifications shall be set forth in the district plan.

continued

continued

New York State
Commissioner's
Regulations
Part 154
7/2/73

Section 154.5 Approval of projects. Within a reasonable time after the receipt of a district plan, a determination shall be made as to which plans will substantially and reasonably carry out the purposes of this Part. In making such determination, the commissioner may take into account all aspects of the district plan and the proposed program or programs, including, but not limited to the following:

(a) Whether the expected educational benefits will accrue to a few or to many of the pupils who might be benefited by the same funds.

(b) Whether expected educational benefits are substantial in themselves or whether they are remote or incidental to other purposes or goals.

(c) Whether or not a program is educationally sound, including whether the staff, facilities, nature and duration of a program are sufficient to meet the stated goals.

(d) Whether the program is seeking to meet previously neglected needs or needs which could be met with other funds by the school district or other existing public bodies.

(e) Whether or not sufficient provisions have been made for the administration and evaluation of the program.

(f) Whether or not the program is economically sound.

Section 154.6 Allottment of funds. (a) Money appropriated by the Legislature for the purposes of this Part shall be apportioned to participating school districts after the district application has been approved by the commissioner.

(b) Payment of all or any part of a grant may be suspended or terminated by the commissioner if the district fails to comply with the provisions of this Part, or with anyother applicable law or regualtions; or if he finds that the district program is not being implemented or administered in a satisfactory manner or is failing substantially to effectuate the purposes of the grant.

(c) Nothing in this Part shall be construed to prevent the use of funds obtained from other sources in the planning, execution or evaluation of the programs.

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Section 154.7 Facilities. School districts shall make use of existing indoor and outdoor facilities of a school district and of other appropriate community facilities approved by the commissioner.

New York State
Commissioner's
Regulations
Part 154
7/2/73

Section 154.8 Supervision and evaluation. (a) All projects for which funds are allotted pursuant to this Part shall be subject to the general supervision of the commissioner and the Education Department, which shall have the right to inspect the facilities, operation and records relating to such programs at any time.

(b) Individual records shall be maintained for each pupil participating in any such program including attendance records, the reason for participation, an assessment of the success of the program with respect to the pupil, and other pertinent information. In addition records shall be kept of the operation of each program on forms approved by the commissioner in order to permit a thorough evaluation of the cost and effect of such program.

(c) Financial records shall be maintained and a report of expenditures submitted no later than July 31, next following the close of the school year.

(d) Each school district shall be required to submit such reports as may be required by the commissioner.

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ESEA VII

Sec. 703 (a) (4) (A) The term 'program of bilingual education' means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, in which, with respect to the years of study to which such program is applicable -

P.L. 95-561
11/1/78
(ESEA VII)

(i) there is instruction given in, and study of, English and, to the extent necessary to allow a child to achieve competence in the English language, the native language of the children of limited English proficiency, and such instruction is given with appreciation for the cultural heritage of such children, and of other children in American society, and with respect to elementary and secondary school instruction, such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to progress effectively through the educational system; and

(ii) the requirements in subparagraphs (B) through (F) of this paragraph and established pursuant to subsection (b) of this section are met.

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(B) In order to prevent the segregation of children on the basis of national origin in programs assisted under this title, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of bilingual instruction may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 per centum. The objective of the program shall be to assist children of limited English proficiency to improve their English language skills, and the participation of other children in the program must be for the principal purpose of contributing to the achievement of that objective. The program may provide for centralization of teacher training and curriculum development, but it shall serve such children in the schools which they normally attend.

(C) In such courses or subjects of study as art, music, and physical education, a program of bilingual education shall make provision for the participation of children in limited English proficiency in regular classes.

(D) Children enrolled in a program of bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or level of educational attainment are placed in the same class, the program of bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his level of educational attainment.

(E) An application for a program of bilingual education shall -

(i) be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of children of limited English proficiency, in accordance with criteria prescribed by the Commissioner;

(ii) be accompanied by documentation of such consultation and by the comments which the Council makes on the application; and

(iii) contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals (of which a majority shall be parents of children of limited English proficiency) which shall be selected by and predominantly composed of parents of children participating in the program, and in the case of programs carried out in secondary schools, representatives of the secondary students to be served.

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(F) Parents of children participating in a program of bilingual education shall be informed of the instructional goals of the program and the progress of their children in such program.

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Lau v. Nichols, 414 U.S. 563, 39L. Ed. 2d1, 94 S. Ct. 786

Excerpted

Mr. Justice Douglas delivered the opinion of the Court: The District Court found that there are 2,856 students of Chinese ancestry in the school system who do not speak English. Of those who have that language deficiency, about 1,000 are given supplemental courses in the English language. About 1,800, however, do not receive that instruction. This class suit brought by non-English-speaking Chinese students against officials responsible for the operation of the San Francisco Unified School District seeks relief against the unequal education opportunities, which are alleged to violate, inter alia, the Fourteenth Amendment. No specific remedy is urged upon us.

No. 72-6520
U.S. Court of Appeals
9th Circuit
1/21/74

Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioners ask only that the Board of Education be directed to apply its experience to the problem and rectify the situation...

(T)here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the education program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

It seems obvious that the Chinese-speaking minority receives fewer benefits than the English-speaking majority from respondents' school system which denies them meaningful opportunity to participate in the educational program -- all earmarks of the discrimination banned by the regulations. In 1970 HEW issued clarifying guidelines, 35 Fed. Reg. 11595, which include the following:

continued

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Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the education program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

No. 72-6520
U.S. Court of Appeals
9th Circuit
1/21/74

Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead end of permanent track.

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PROGRAM, BILINGUAL EDUCATION AND ENGLISH AS A SECOND LANGUAGE

ASPIRA OF NEW YORK, INC., et al.,
Plaintiffs,

72 Civ. 4002

-against-

Board of Education of the City of New York, et al,

Defendants.

Exerpted

The Consent Decree provides, among other things:

1. The Board of Education will design and implement an improved method for identifying and classifying children who are Spanish-speaking or Spanish-surnamed according to their ability to speak, read, write and comprehend English and Spanish...

2. By September, 1975, the defendants shall provide all Spanish-speaking or Spanish-surnamed children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish with: (a) a planned and systematic program designed to develop the child's ability to speak, understand, read and write the English language; (b) instruction in substantive courses in Spanish (for example, courses in mathematics, science and social studies); and (c) a planned and systematic program designed to reinforce and develop the child's use of Spanish;...

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New York State Education Law Section 3602, as amended

e. "Pupils with special educational needs" shall mean the number of pupils attending the public schools of a district computed as follows: (1) determine the number of third and sixth grade pupils who scored below level four on the reading test and those who scored below level four on the mathematics test for New York State elementary schools administered in the schools nineteen hundred seventy-four-seventy-five and nineteen hundred seventy-five-seventy-six, provided, however, that a district employing eight or more teachers in such years but not operating a third or sixth grade may use the percentage computed pursuant to this paragraph for the disrict which in such years enrolled the greatest number of third or sixth grade pupils from such district; divide the sum of such numbers by the number of such third and sixth grade pupils who took each of such tests, provided, however, that a district which in nineteen hundred seventy-four-seventy-five or in nineteen hundred seventy-five-seventy-six did not maintain a home school or employed fewer than eight teachers, and which in the base year employed eight or more teachers, may use the scores in a later test as designated by the commissioner for the purposes of this paragraph; express the result as a percentage carried to one decimal place without rounding and (2) multiply such percentage by the district's base year total aidable pupil units minus the district's additional adiable pupil units computed pursuant to subdivisions nine and nine-a of this section. For the purpose of the computation made pursuant to this paragraph, pupils attending campus schools of the state university shall be included in the numbers of pupils in the district in which they reside. The percentage of such pupils in component districts shall be used in the case of central high school districts.

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New York State Education Law Section 3602, as amended

9. Additional aidable pupil units. a. The additional aidable pupil units used to compute total aidable pupil units pursuant to subdivision eight of this section shall be computed as follows: The attendance of pupils with special educational needs shall be multiplied by twenty-five per centum, the attendance of pupils with handicapping conditions shall be multiplied by one hundred per centum, the attendance of summer session pupils shall be multiplied by twelve per centum, and the attendance of evening school pupils shall be multiplied by fifty per centum. The sum of such products shall constitute the additional aidable pupil units. Nothing contained in this subdivision shall be construed to result in the inclusion of the attendance of summer session or evening school pupils in the computation of weighted or adjusted average daily attendance pursuant to subdivision two of this section.

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b. For the computation of total wealth pupil units the determination of the number of pupils with special educational needs shall use all wealth pupil units, excluding additional aidable pupil units. The attendance of pupils with handicapping conditions shall include pupils for whom the district contracts under the provisions of section forty-four hundred two of this chapter, as well as all handicapped pupils included in average daily attendance. Only resident pupils shall be used for computation of wealth units.

New York State
Education Law
Section 3602,
as amended

9-a. Secondary school weighting. For the school years commencing July first, nineteen hundred seventy-eight, and thereafter, there shall be added to the total aidable pupil units computed in subdivision eight of this section a number obtained by multiplying by twenty-five per centum the weighted average daily attendance in grades seven through twelve for whom the district has not received any additional apportionment attributable to the weightings provided in subdivisions nine or seventeen of this section; in addition there shall be added to weightings of secondary pupils who receive a weighting for pupils with special educational needs an additional weighting of fifteen per centum. Such weighted average daily attendance shall be that used in computation of total aidable pupils units in subdivision eight of this section.

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(ESEA Title I) PROHIBITION OF CONSIDERATION OF FEDERAL AID IN DETERMINING STATE AID

P.L. 95-561
11/1/78

Sec. 174. No State shall take into consideration payments under this title in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

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NOTE: See also Section 06.40, supplement not supplant.

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Federal Supplement 432-P1182
"Richmond Case"
Billie Alexander and Barbara Alexander, on their behalf and on behalf of all other similarly situated, as parents and next friends of, Dyan Alexander and Timothy Alexander, minor children, Plaintiffs,

vs.

Joseph A. Califano, Jr., Individually and as Secretary of the Department of Health, Education and Welfare, et al., Defendants.

No. C-76-1982-WWS.
United States District Court,
N.D. California
May 17, 1977

Low-income residents of school district and educationally deprived children requiring special educational assistance brought suit for declaratory judgement that the school district's method of allocating funds received under Title I of the Elementary and Secondary Education Act of 1976 violated that Act. On the plaintiffs' motion for partial summary judgement, the District Court, William W. Schwarzer, J., held that the school district, acting under regulations of the state educational agency, could not allocate state and federal compensatory education funds on a pool basis rather than allocating state funds without regard to the available federal funds, because it resulted in a reduction in the amount of state funds available to an area because of the availability of Title I funds.

Motion granted.

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FINANCE, USE OF ALL PSEN AID

New York State
Education Law
Section 3602,
as amended

3602
10.a. program approval requirements. Any school district receiving an apportionment partially attributable to the weightings provided in subdivision nine of this section for pupils with special education needs or for pupils with handicapping conditions and any school district receiving an additional apportionment pursuant to subdivision seventeen of this section for severely handicapped pupils or for pupils in occupational education programs shall use the total apportionment attributable to such pupils for locally administered programs for such pupils in accordance with regulations issued by the commissioner.

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Sec. 111(a) Size of Allocation

P.L.95-561
11/1/78

(2)(A) in any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (i) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amont shall be 80 per centum o the average per pupil expenditure in the States, or (ii) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average age pupil expenditure in the United States.

(B) In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under subparagraph (A) for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with the basic criteria prescribed by the Commissioner.

Bypass of District

(3)(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (C), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

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(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines that will best carry out the purposes of this title.

Districts, Which Overlap Counties

(C) In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Commissioner for authority during any particular fiscal year to make the allocations under this part (other than section 117) directly to local educational agencies without regard to the counties. If the Commissioner approves an application of a State educational agency for a particular year under this subparagrpah, the State education agency shall provide assurances that such allocations will be made using precisely the same factors for determining a grant as are used under this part and that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Commissioner for a final determination.

(D)(i) From one-half of any amount made available for this subpart for any fiscal year in excess of the amount made available for this subpart for fiscal year 1979, there shall be alloted to each State an amount which bears the same ratio to such excess as the product of-

(I) the number of children in such State aged five to seventeen, inclusive, from families below 50 per centum of the median national income for four-person families from the 1975 survey of income and education conducted by the Bureau of Census, multiplied by-

(II) 40 percentum of the amount determined under the second sentence of paragraph (2)(A) and, in the case of Puerto Rico, the product determined under subparagraph (C) and (ii) of this paragraph.

bears to the sum of such products for all the States.

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(ii) In any case in which the Commissioner finds that a State's percentage decrease in children from low-income families exceeds 25 per centum between the 1970 decennial census, as adjusted, and the 1975 survey of income and education, the Commissioner shall allocate funds based on the most current valid data available or based on a resurvey of the affected State by the Bureau of the Census.

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(iii) From the amount alloted to each State under division (i), the amount which each local educational agency in that State shall be eligible to receive under this subparagraph shall be an amount which bears the same ratio to the total amount allotted to such State under this subparagraph as the amount such local educational agency receives under paragraph (2) bears to the total amount of funds made available to local educational agencies in such State under such paragraph.

(E) From the remaining one-half of any amount made available for this subpart for fiscal year in excess of the amount made available for this subpart for fiscal year 1979 after the application of subparagraph (D), there shall be allotted to each State an amount determined in accordance with paragraph (2) of this subsection.

(4) For purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Sec. 111) (b) MINIMUM NUMBER OF CHILDREN TO QUALIFY. A local educational agency shall be eligible for a basic grant for a fiscal year under this subpart only if it meets the following requirements with respect to the number of children counted under subsection (c):

(1) In any case (except as provided in paragraph (3)) in which the Commissioner determines that satisfactory date for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least ten.

(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least ten.

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(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Commissioner has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies or all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Commissioner for the purposes of this subsection.

Sec. 111 (c) CHILDREN TO BE COUNTED. - (1) (A) The number of children to be counted for purposes of this section, other than for subsection (a)(3)(D), is the aggregate of -

> NOTE: While P.L. 95-562 allocates money on the basis of children 5-17 years of age other eligible children who are in elementary or secondary school may be served.

(i) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A),

(ii) the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), subject to subparagraph (B) of this paragraph, and

(iii) the number of children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part B for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

(B) For the purpose of division (ii) of subparagraph (A) of this paragraph the number of children aged five through seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B) shall be reduced by one-third for fiscal year 1979; except that such reduction shall not be applicable with respect to determinations made under section 117(b) of the number of chidlren to be counted under this subsection.

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Sec. 111(c) Children to be Counted

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11/1/78

(2)(A) For the purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decenial census.

(B) For purposes of this section, the Secretary shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aide to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to him before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable date available to him at the time of such determination.

(C) When requested by the Commissioner, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each county or school district, and the Commissioner is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce in the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

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TREATMENT OF EARNINGS FOR PURPOSES OF AID TO FAMILIES WITH DEPENDENT CHILDREN

P.L.95-561
11/1/78

Sec. 112. Notwithstanding the provisions of title IV of the Social Security Act, a State plan approved under section 402 of such Act shall provide that for a period of not less than twelve months, and may provide that for a period of not more than twenty-four months, the first $85 earned by any person in any month for services rendered to any program assisted under this title of this Act shall not be regarded (1) in determining the need of such person under such approved State plan or (2) in determining the need for any other individual under such approved State plan.

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CONCENTRATION GRANTS

P.L.95-561
11/1/78

Sec. 117. (a) Purpose. - It is the purpose of this section to provide additional assistance to local educational agencies in counties with especially high concentrations of children from low-income families to enable local educational agencies in such counties to provide more effective programs of instruction, especially in the basic skills of reading, writing, and mathematics, to meet the special educational needs of eductionally deprived children.

(b) ELIGIBLILITY FOR AND AMOUNT OF SPECIAL GRANTS. - (1) Each county, in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which is eligible for a grant under this title for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if -

(A) the number of children counted under section 111(c) of this title for local educational agencies in such county for the preceding fiscal year exceeds five thousand, or

(B) the number of children counted under section 111(c) exceeds 20 per centum of the total number of children aged five to seventeen inclusive in the school districts of local educational agencies in such county in that fiscal year, except that no such State shall receive less than one-quarter of one percentum of the sums appropriated under subsection (d) for such section for such fiscal year.

(2) For each county in which there are local educational agencies eligible to receive an additional grant under this section for any fiscal year the Commissioner shall determine the product of-

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(A) the number of children in excess of five thousand counted under section 111(c) for the preceding fiscal year or the number of children counted under that section in excess of 20 per centum of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county for that preceding fiscal year, whichever is greater, and

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(B) the quotient resulting from the division of the amount determined for those agencies under section 111(a)(2) of this title for the fiscal year for which the determination is being made divided by the total number of children counted under section 111(c) for that agency for the preceding fiscal year.

(3) The amount of the additional grant to which an eligible county is entitled under this section for any fiscal year shall be an amount which bears the same ratio to the amount appropriated under subsection (d) for that fiscal year as the product determined under paragraph (2) for such county for that fiscal year bears to the sum of such products for all counties in the United States for that fiscal year.

(4) For the purposes of this section, the Commissioner shall determine the number of children counted under section 111(c) for any county, and the total number of children aged five to seventeen, inclusive, in school districts of local educational agencies in such county, on the basis of the most recent satisfactory data available at the time the entitlement for such county is determined under section 111.

(5) Funds allocated to counties under this part shall be allocated by the State educational agency, pursuant to regulations established by the Commissioner, among the several local eduational agencies whose school districts lie (in whole or in part) within the county on the basis of the current distribution in the county of children aged five to seventeen, inclusive, from low-income families (using a poverty level selected by the State educational agency consistent with the purposes of this title) as determined on the basis of the available data which such State educational agency determines best to reflect the current distribution in the county of children aged five to seventeen, inclusive, from low-income families, except that in determining the number of such children in any local educational agency in which less than 20 per centum of the children are from low-income families, each such child shall be counted as a fraction in which the numerator is the percentage of low-income children in the school district of that agency and the denominator is 20.

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"RATABLE REDUCTION - 85% SAVE HARMLESS"

P.L.95-561
11/1/78

Sec. 193 (a) ADJUSTMENT ALLOCATION. - If the sums appropriated for any fiscal year for making the payments provided in this title other than amounts appropriated for subpart 2 of part A are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part B shall be equal to the total amount of the grant as computed under each such subpart. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under subpart 1 of Part A of this title for such year, the allocations to such agencies shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the agregate of such allocations within the limits the amount so appropriated. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under subpart 1 of part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local education agency from being thereby reduced to less than 85 per centum of its allocation for such year.

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SPECIAL INCENTIVE GRANTS

P.L.95-561
11/1/78
amended
7/13/79

Sec. 116. (a) ELIGIBILITY. - (1) Each local educational agency that is eligible to receive a payment under section 111 for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if it is located in a State which has in effect for that fiscal year a State program meeting the requirements of paragraph (2) under which financial assistance is provided to meet the special educational needs of educationally deprived children.

(2) A State program meets the requirements of this subsection if, under State Law-

(A) the program meets the requirements of section 131(c); and

(B) not less than 50 per centum of the funds expanded (sic) under the program in any school district of any local educational agency in the State in the fiscal year preceding any fiscal year in which the State receives a payment under this subpart is expended in school attendance areas of such agencies having high concentrations of children from low-income families.

(b) AMOUNT OF GRANTS. - (1) Except as provided in paragraph (3), the aggregate amount to which the local educational agencies in a State are entitled under this section for any fiscal year shall be 50 per centum of the amount of State funds expended, in the most recent fiscal year for which data are available, under a State program meeting the requirements of paragraph (2) of subsection (a) of this section.

(2) The amount of the additional grant for each local educational agency in a State under this section for any fiscal year shall bear the same ratio to the amount allocated to such state under subsection (a) of this section as the amount allocated to such local educational agency under section 111 of this title for such fiscal year bears to the aggregate amount allocated to all local educational agencies in the State under section 111 for such fiscal year.

(3) The aggregate amount which the local educational agencies in a State shall be eligible to receive under this section for any fiscal year shall not exceed 10 per centum of the aggregate amount which all local educational agencies in such State are eligible to receive under section 111 of this title for such fiscal year.

continued

continued

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(4) Each State which desires to receive payments under this section shall develop a system for determining the data required by subparagraph (2)(B) of subsection (a) of this section relating to the percentage of State funds expended in school attendance areas having high concentrations of children from low-income families and required by paragraph (1) of this subsection relating to the amount of State funds expended under the State program referred to in that paragraph. The State shall submit to the Commissioner such information as the Commissioner may request concerning that system.

(c) PAYMENTS; USE OF FUNDS. - (1) Except as provided in paragraph (3), the Commissioner shall pay to each State for each fiscal year the agregate amount to which the local educational agencies in such State are entitled under subsection (b) after any ratable reductions under subsection (d).

(2) The total amount to which the local educational agencies in a State are entitled under this section for any fiscal year shall be added to the amount paid to such State under section 191 for such year. From the amount paid to it under this subsection, the State shall distribute to each local educational agency of the State the amount of its additional grant as determined under subsection (b)(2).

(3) Whenever the expenditures made by a State in accordance with subsection (a) in a fiscal year equal or exceed expenditures in the preceding fiscal year, the amount paid to such State under this section shall, subject to subsection (d), not be less than the amount paid to such State under this section in the preceding fiscal year, and the total of any increases required under this paragraph shall be derived by proportionately reducing the amount paid to States which were not entitled to a payment under this section in the preceding fiscal year, except that the amount paid to a State under this section for any fiscal year shall not exceed the maximum amount to which such State is entitled for such fiscal year under paragraph (1) of subsection (b).

(4) The amount paid to a local educational agency under this part shall be used by such agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to all other requirements in subpart 3 of this part.

(d) RATABLE REDUCTIONS. - If the sums appropriated pursuant to subsection (e) for a fiscal year are not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under this section, the amount to be paid such agencies shall be ratably reduced to the extent necessary to bring such payments within the limits of the amounts so appropriated. In case additional funds become available for making payments under this section for that year, such reduced amounts shall be increased on the same basis that they were reduced.

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(e) APPROPRIATIONS. - There are authorized to be appropriated for the purposes of this section such sums as may be necessary for fiscal year 1980 and for the three succeeding fiscal years.

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amended
7/13/79

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FINANCE, BILINGUAL PROGRAM BUDGET

154.3(b) (8) THE PORPOSED BUDGET FOR THE PROGRAM. This shall indicate in detail the manner in which funds are expected to be received and disbursed, including all funds used in connection with the program whether appropriated or provided by the State, Federal or local government, or by public agencies, private persons or the school district itself.

New York State
Commissioner's
Regulations
Part 154
7/2/73

NOTE: This applies to Chapter 720 Programs.

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ESEA I Sec. 117 (c) CONCENTRATION GRANTS P.L.95-561 11/1/78

(c) PAYMENTS: USE OF FUNDS. - (1) The total amount to which the counties in a State are entitled under this section for any fiscal year shall be added to the amount paid to that State under section 191 for such year. From the amount paid to it under this section, the State shall distribute to local educational agencies in each county of the State the amount (if any) to which it is entitled under this section.

(2) The amount paid to a local educational agency under this section shall be used by that agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to the other requirements in subpart 3 of this part.

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ESEA I SEC. 124 (a) PURPOSE OF PROGRAM. A local educational agency may use funds received under this title only for programs and projects which are designed to meet the special educational needs of the children referred to in section 123. Such programs and projects may include tha acquisition of equipment, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, and, where necessary, the construction of school facilities, and planning for such programs and projects. P.L.95-561 11/1/78

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ESEA I Sec. 124 (c) PLANNING. - A local educational agency may use funds received under this title for planning only if (1) the planning relates directly to programs or projects to be assisted under this title and has resulted, or is reasonably likely to result, in a program or project to be assisted under this title, and (2) such funds are needed because of the innovative nature of the program or project or because such agency lacks the resources necessary to plan adequately for programs and projects to be assisted under this title. The amount a local eductional agency may use for plans for any fiscal year may not exceed 1 per centum of the amount determined for that agency for that year pursuant to section 111 or $2,000, whichever is greater. P.L.95-561 11/1/78

continued

continued

ESEA I Sec. 124 (d) SUFFICIENT SIZE, SCOPE AND QUALITY. A local educational agency may use funds received under this title only for programs and projects which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served, and to this end such programs and projects must involve an expenditure of not less than $2,500, except that a State educational agency may reduce such $2,500 requirement for a local educational agency if it determines that it would be impossible, for reasons such as distance or difficulty of travel, for such local educational agency to join effectively with other local educational agencies for the purpose of meeting the requirement. P.L.95-561 11/1/78

ESEA I Sec. 124 (e) EXPENDITURES RELATED TO RANKING OF PROJECT AREAS AND SCHOOLS. - A local educational agency may receive funds under this title only if such funds are allocated among project areas or schools for programs and projects assisted under this title on the basis of the number and needs of children to be served as determined in accordance with section 123.

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ESEA I Sec. 124 (f) (2) A local educational agency may use funds received under this title for health, social, or nutrition services for participating children under this title only if such agency has requested from the State educational agency assistance in locating and utilizing other Federal and State programs to provide services. P.L.95-561 11/1/78

NOTE: Considering the academic priorities, in New York State, it is unlikely that health, social or nutritional services will be approved.

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ESEA I Sec. 124 (m) CONTROL OF FUNDS. - A local educational agency may receive funds under this title only if control of such funds, and title to property derived therefrom, is in a public agency for the uses and purposes provided in this title, and only if a public agency will administer such funds and property. P.L.95-561 11/1/78

NOTE: This means that there is non-public school program. There are services for school children which may be provided on public or non-public school sites by the local school district.

continued

continued

ESEA I Sec. 124
(n) CONSTRUCTION. - A local educational agency may use funds received under this title for projects for construction of school facilities only if -

P.L.95-561
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(1) the project is not inconsistent with overall State plans for the construction of school facilities and the requirements of setion 433 of the General Education Provisions Act are complied with on all such projects,

(2) in developing plans for such facilities, due consideration has been given to compliance with such standards as the Secretary may prescribe or approve in order to ensure that facilities constructed with the use of Federal funds under this title are, to the extent appropriate in view of the uses to be made of the facilities, accessible to and useable by, handicapped persons, and

(3) in developing plans for such facilities, due consideration has been given to excellence of architecture and design, and inclusion of works of art, (not representing more than 1 percentum of the cost of the project).

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GEPA Sec. 433. Except for emergency relief under section 7 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), all laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Number 14 of 1950 and section 2 of the Act of June 13, 1934 as amended (40 U.S.V. 276c).

P.L.90-247
as amended by
91-230
92-318
93-380
94-482
1978

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ESEA I Sec. 124

(o) JOINTLY OPERATED PROGRAMS. - Two or more local educational agencies may, at their option, enter into an agreement for carrying out jointly operated programs and projects assisted under this title.

P.L.95-561
11/1/78

> NOTE: See 45CFR Part 74-Administration of Grants of Education Division General Administrative Regulations. (EDGAR). This details many specific allowable items. Federal Register Vol. 44 No. 88 5/4/79 Page 26344 ff.

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1. The Office of Education will determine, on a case-by-case basis, whether "special and unusual" circumstances exist that would justify the expenditure of Title I funds for out-of-state travel by members of advisory councils to a national or regional conference. This determination will be based on such factors as the following:

ESEA Title I
Program Bulletin
April 16, 1979
USOE

(a) The relevance of the agenda of the conference to Title I.

(b) The uniqueness of the subject matter of the conference.

(c) The time of the conference with regard to key events affecting Title I programs.

(d) Specific advantages of holding a national or regional conference.

2. The Office of Education will inform you of approved national and regional conferences.

3. The number of advisory council members from a state attending an approved national or regional conference must be limited. When OE announces its approval of a regional or national conference it will also provide guidance so that each SEA may determine the appropriate number of advisory council members whose attendance at the conference may be paid from Title I funds.

4. Your agency should develop a plan for determining how the recommended number of council members will be divided among LEA's in your State.

continued

continued

5. Your agency should plan with the LEA's in your State to have the council members who attend national or regional conferences help train other council members in their own and other LEA's in the State by sharing the information received at those conferences.

ESEA Title I
Program Bulletin
April 16, 1979
U.S.O.E.

6. SEA's should apply the foregoing standards and considerations to the attendance of advisory council members at State conferences.

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Construction and Equipment

ESEA I
State Policies and
Federal Guidelines
for Education
of the Disadvantaged
(selected summary)
N.Y.S.E.D. 1978

- New York State does not approve the expenditure of ESEA Title I funds for permanent construction.
- Remodeling or temporary modification may be approved in existing buildings within existing floor areas at a cost rate equivalent to such expenses in surrounding facilities in the area.
- Written justification with specifications must be submitted for consideration prior to approval.
- Minor remodeling may not exceed $2,000 per room.

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ESEA I (State)
Guidelines
June 1971
N.Y.S.E.D.

- May travel and other expenses incurred by nonpublic school representatives at Title I, ESEA conferences be reimbursed?

  Representatives of nonpublic schools may be invited as consultants or attendees to Title I, ESEA conferences and may be reimbursed for their expenses on the same basis as local educational agency personnel. That is, such expenses are reimbursable if incurred as a portion of a grant program under Title I, ESEA.

- May stipends be paid to nonpublic school personnel in an inservice education project under Title I, ESEA?

  If the project in question is financed entirely with Federal funds, stipends may be paid to nonpublic school personnel participating in inservice education under Title I, ESEA. No State or local funds may be used, even on a temporary basis, for this purpose.

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Letter
TO: Dr. Perry Davis
Director,
Office of Funded Programs
NYC Board of Education
From: Maria Ramirez
Assistant Commissioner
for General Education
and Curricular Services
Date: October 22, 1979

This first point is that the same method should be used to calculate the excess cost of reduced class size which may be charged to either PSEN or ESEA I or the local contribution to meet the Regents requirement for remediation. The formula you suggest is a step in the right direction but does not take all factors into account. There are several steps in the calculation

I.	cost regular size class	number of pupils regular class	regular per pupil cost
II.	cost compensatory education reduced size class	number of pupils reduced size class	compensatory education per pupil cost
III.	compensatory education per pupil cost	regular per pupil cost	excess per pupil cost
IV.	excess per pupil cost	% time on priority areas	# of eligibles in class

compensatory
education cost to
be charge to PSEN
or ESEA I or local
effort

Using the figures you provide, the example works out as follows:

I. $25,000 32 = $781.25

II. $25,000 16 = $1,562.50

III. $1,562.50 - $781.25 = $781.25

IV. $781.25 X 60% X 16 = $7,560

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CONSTRUCTION, REMODELING, LEASING

NOTE: Attention is also drawm to sections 408, 409, 416, 1726, and 7209 of New York State Education Law. Part 155.3 and 155.4 of New York State Education Commissioner's Regulations and the Manual of Planning Standards issued by the New York State Education Department in 1977.

FINANCE, FUNDING DATES

GEPA Sec. 412 (a)

Appropriations for any fiscal year for grants, loans, contracts, or other payments to educational agencies or institutions under any applicable program may, in accordance with regulations of the Secretary, be made available on the basis of an academic or school year differing from such fiscal year.

General Education
Provisions Act
P.L.93-380
8/21/74

GEPA Sec. 413

Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this title, funds appropriated for any fiscal year to carry out any of the programs to which this title is applicable shall remain available for obligation and expenditure until the end of such fiscal year.

NOTE: THE NEW YORK STATE SCHOOL FISCAL YEAR BEGINS JULY 1 AND ENDS JUNE 30. See also Finance, Reallocation of Funds and Carryover 06.80.

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S100b.707 When obligations are made. The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

EDGAR
5/4/79

If the obligation is for-	Then the obligation is made-
(a) Acquisition of real or personal property.	On the date the State or subgrantee makes a binding written commitment to acquire property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date the State or subgrantee makes a binding written commitment to get the services or work.
(d) Performance or work other than personal services.	On the date the State or subgrantee makes a binding written commitment to get the work.
(e) Public utility services...	When the State or subgrantee receives the services.

continued

continued

(f)	Travel...........................	When the State's or subgrantee's personnel take the travel.	EDGAR 5/4/79
(g)	Rental of real or personal property.	When the State or subgrantee uses the property.	

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S100b.215 Nonexpendable personal property.

General Provisions for Programs-Administrative and Fiscal Requirements 11/6/73

(a) Title. - When nonexpendable personal property is acquired by a recipient wholly or in part with Federal funds, title shall be vested in the recipient.

(b) Use. - (1) The recipient shall retain such property in the project as long as there is a need for such property to accomplish the purpose of the project, whether or not the project continues to be supported by Federal funds.

(2) When there is no longer a need for such property to accomplish the purpose of the project, the recipient shall use the property in connection with other Federal awards it has received in the following order or priority:

(i) Other awards under Federal programs administered by the Commissioner needing the property.

(ii) Awards of other Federal agencies needing the property.

(3) When the recipient no longer has need for such property in any of its federally assisted projects, the property may be used for the recipient's own official activities in accordance with the following standards:

(i) If the property had an acquisition cost of less than $500 per unit and has been used 4 years or more, the recipient may use the property without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) For all of such property not covered under subparagraph (3) (i) of this paragraph, the recipient may retain the property for its own use provided that a fair compensation is made to the Federal Government for the Federal share of the property. The amount of such compensation shall be computed by applying the percentage of Federal participation in the cost of the project to the current fair market value of the property.

(c) Disposition. - If the recipient has no need for the property, disposition of the property shall be made as follows:

(1) If the property had an acquisition cost of $1,000 or less per unit (except for property covered under paragraph (b) (3) (i) of this section) the recipient shall sell the property and reimburse the Federal Government in accordance with subparagraph (2) (iii) of this paragraph.

continued

continued

General Provisions for Programs-Administrative and Fiscal Requirements 11/6/73

(2) If the property had an acquisition cost of over $1,000 per unit, the recipient shall request disposition instructions from the State agency. The State agency will issue instructions to the recipient within 120 days following the receipt of such request and the following procedures shall govern:

(i) If the recipient is instructed to ship the property elsewhere, the recipient will be reimbursed by the State agency with an amount which is computed by applying the percentage of the recipient's participation in the project to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the recipient is instructed to otherwise dispose of the property, the recipient will be reimbursed by the State agency for the costs incurred in such disposition.

(iii) If disposition instructions are not issued within the 120-day period specified in subparagraph (2) of this paragraph, the recipient shall sell the property and reimburse the Federal Government with an amount which is computed by applying the percentage of Federal participation in the project to the sales proceeds. The recipient may, however, deduct and retain from that amount $100 or 10 percent of the proceeds, whichever is greater, for the recipient's selling and handling expenses.

(d) Property management standards. - Recipients' property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for (i) a description of the property; (ii) manufacturer's serial number or other identification number; (iii) acquisition date and cost; (iv) source of the property; (v) percentage of Federal funds used in the purchase of the property; (vi) location, use, and condition of the property; and (vii) ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the Federal Government for the Federal share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the property.

continued

continued

General Provisions for Programs-Administrative and Fiscal Requirements 11/6/73

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. The recipient shall be responsible for replacing or repairing (with funds of such recipient) property which is lost, damaged, or destroyed due to the negligence of the recipient.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

S100b.216 Expendable personal property.

(a) The recipient may at its option either retain or sell items of expendable personal property when no longer needed for any federally sponsored activity (including activities sponsored by other agencies).

(b) Compensation to the Federal Government is required if the aggregate fair market value of all of those items acquired with Federal assistance exceeds $500 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project to the current fair market value of items retained, and to the sales proceeds of items sold.

S100b.217 Intangible personal property.

(a) (1) All inventions conceived or first actually reduced to practice in the course of or under a federally assisted project are subject to Parts 6 and 8 of this title. Each invention shall be promptly and fully reported to the Assistant Secretary for Health, Department of Health, Education, and Welfare.

(2) Determination as to ownership and disposition of rights to such inventions, including whether a patent application shall be filed, and, if so, the manner of obtaining, administering, and disposing of rights under any patent application or patent which may issue shall be made either:

(i) By the Federal Government, or

(ii) Where the recipient has a separate formal institutional patent agreement with the Department, by the recipient in accordance with that agreement.

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(b) Where the project results in a book or other copyrightable material, the author or recipient is free to copyright the work, but the Commissioner reserves a royalty free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

General Provisions
for Programs-
Administrative and
Fiscal Requirements
11/6/73

S100b.218 Publications

Any publication or presentation resulting from or primarily related to Federal financial assistance shall contain the following acknowledgement:

The activity which is the subject of this report was supported in whole or in part by the U.S. Office of Education, Department of Health, Education, and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

S100b.220 Determining percentage of participation.

(a) Various provisions in this subpart require a determination of the percentage of Federal (or recipient) participation in the cost of the project or program in order to compute the amount of compensation for the value, or proceeds from sale of property. In determining the applicable percentage, there shall first be deducted from the allowable costs incurred during the grant period, any royalties or other income (not including interest income or proceeds from sale of property) earned by the federally supported project or program during the grant period.

(b) The deduction of income required by paragraph (a) of this section is independent of, and is not intended to control, the disposition of such income pursuant to Subpart M of this part.

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FINANCE, EXCESS COSTS

ESEA I Sec. 126 (b) USE OF FUNDS LIMITED TO EXCESS COSTS. - Subject to the provisions of section 131, a local educational agency may use funds received under this title only for the excess costs of programs and projects referred to in section 124(a). As used in this subsection, the term 'excess costs' means costs directly attributable to programs and projects which exceed the average per pupil expenditure of a local educational agency in the most recent year for which satisfactory data are available for pupils in the grade or grades included in such programs or projects.

P.L.95-561
11/1/78

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ESEA I Sec. 131 (a) IN GENERAL - For the purpose of determining compliance with the requirement of section 126(b) (relating to the use of funds only for excess costs of programs and projects) and of section 126(e) (relating to comparability of services), a local educational agency may, at its option, exclude State and local funds expended for carrying out a special program or a State phase-in program.

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11/1/78

(b) SPECIAL PROGRAM AND STATE PHASE-IN PROGRAM DEFINED. - For purposes of this section -

(1) a special program is limited to-

(A) a State compensatory education program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (c) and which the State educational agency determines is being implemented by the local educational agency in accordance with subsection (c);

(B) a State compensatory education program which the Commissioner has determined in advance under subsection (e) does not satisfy the requirements of subsection (c), but which he has determined permits the local educational agency, at its option, to use such special State funds in accordance with subsection (c), provided that the local educational agency designs a program which the State educational agency determines in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines will be implemented by the local educational agencies in accordance with subsection (c); or

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(C) a local compensatory education program which the State educational agency has determined in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines is being implemented in accordance with subsection (c); and

(D) a bilingual program for children of limited English proficiency or special educational program for handicapped children or children with specific learning disabilities; and

(2) a State phase-in program is a program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (d) and which the State educational agency determines will be implemented by local educational agencies in accordance with subsection (d).

(c) STATE AND LOCAL COMPENSATORY EDUCATION PROGRAMS SIMILAR TO TITLE I PROGRAMS. - A state or local program meets the requirements of this subsection if it is similar to programs assisted under this part. The Commissioner shall consider a State or local program to be similar to programs assisted under this part if-

(1) all children participating in the program are educationally deprived,

(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2), and (3) of this subsection, and

(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3), and (4) of this subsection are met.

NOTE: PSEN comes under this provision.

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(d) CERTAIN STATE PHASE-IN PROGRAMS. - A State education program which is being phased into full operation meets the requirements of this subsection if the Commissioner is satisfied that-

(1) the program is authorized and governed specifically by the provisions of State law;

(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

(3) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

(4) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(5) the program will benefit all children in a particular school or grade-span within a school;

(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to the date of enactment of the Education Amendments of 1978 shall be deemed to begin on the date of enactment of such Amendments;

(8) at all times during such phase-in period at least 50 per centum of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program;

(10) the local educational agency is separately accountable, for purposes of compliance with paragraphs (1) through (6), (8), and (9) of this subsection, to the State educational agency for any funds expended for such program; and

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(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8), and (9) and the State educational agency is complying with paragraph (10).

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(e) ADVANCE DETERMINATIONS BY THE COMMISSIONER.

NOTE: Commissioner in this context means the U.S. Secretary of Education.

-The Commissioner shall make an advance determination of whether or not a State program described in subsection (b) (1) (A) or (B) or (b) (2) meets the requirements of subsection (c) or subsection (d). The Commissioner shall require each State educational agency to submit to him the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for him to make such an advance determination. The Commissioner's determination shall be in writing and shall include the reasons for his determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Commissioner.

(f) ADVANCE DETERMINATION BY THE STATE EDUCATIONAL AGENCY. - The State educational agency shall make an advance determination of whether or not a program described in subsection (b) (1) (C) meets the requirements of subsection (c). The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines, and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State educational agency.

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ESEA I Sec. 124(a) PURPOSE OF PROGRAM. - A local educational agency may use funds received under this title only for programs and projects which are designed to meet the special educational needs of the children referred to in section 123. Such programs and projects may include the acquisition of equipment, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, and, where necessary, the construction of school facilities, and planning for such programs and projects.

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ESEA I Sec. 126(c) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT REGULAR NONFEDERAL FUNDS. - A local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from regular non-Federal sources and from non-Federal sources for State phase-in programs described in section 131(b) for the education of pupils participating in programs and projects assisted under this title, and in no case may such funds be so used as to supplant such funds from such non-Federal sources.

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ESEA SEc. 131(b) SPECIAL PROGRAM AND STATE PHASE-IN PROGRAM DEFINED. - For purposes of this section-

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(1) a special program is limited to-

(A) a State compensatory education program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (c) and which the State educational agency determines is being implemented by the local educational agency in accordance with subsection (c);

(B) a State compensatory education program which the Commissioner has determined in advance under subsection (e) does not satisfy the requirements of subsection (c), but which he has determined permits the local educational agency, at its option, to use such special State funds in accordance with subsection (c), provided that the local educational agency designs a program which the State educational agency determines in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines will be implemented by the local educational agencies in accordance with subsection (c); or

(C) a local compensatory education program which the State educational agency has determined in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines is being implemented in accordance with subsection (c); and

(D) a bilingual program for children of limited English proficiency or special educational program for handicapped children or children with specific learning disabilities; and

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(2) a State phase-in program is a program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (d) and which the State educational agency determines will be implemented by local educational agencies in accordance with subsection (d).

(c) STATE AND LOCAL COMPENSATORY EDUCATION PROGRAMS SIMILAR TO TITLE I PROGRAMS. - A State or local program meets the requirements of this subsection if it is similar to programs assisted under this part. The Commissioner shall consider a State or local program to be similar to programs assisted under this part if-

(1) all children participating in the program are educationally deprived,

(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2), and (3) of this subsection, and

(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3), and (4) of this subsection are met.

NOTE: PSEN comes under 131(c).

(d) CERTAIN STATE PHASE-IN PROGRAMS. - A State education program which is being phased into full operation meets the requirements of this subsection if the Commissioner is satisfied that-

(1) the program is authorized and governed specifically by the provisions of State law;

(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

continued

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(3) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives; P.L.95-561 11/1/78

(4) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(5) the program will benefit all children in a particular school or grade-span within a school;

(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to the date of enactment of the Education Amendments of 1978 shall be deemed to begin on the date of enactment of such Amendments;

(8) at all times during such phase-in period at least 50 per centum of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program;

(10) the local educational agency is separately accountable, for purposes of compliance with paragraphs (1) through (6), (8), and (9) of this subsection, to the State educational agency for any funds expended for such program; and

(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8), and (9) and the State educational agency is complying with paragraph (10).

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(e) ADVANCE DETERMINATIONS BY THE COMMISSIONER. - The Commissioner shall make an advance determination of whether or not a State Program described in subsection (b) (1) (A) or (B) or (b) (2) meets the requirements of subsection (c) or meets the requirements of subsection (d). The Commissioner shall require each State educational agency to submit to him the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for him to make such an advance determination. The Commissioner's determination shall be in writing and shall include the reasons for his determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Commissioner. P.L.95-561 11/1/78

(f) ADVANCE DETERMINATION BY THE STATE EDUCATIONAL AGENCY. - The State educational agency shall make an advance determination of whether or not a program described in subsection (b) (1) (C) meets the requirements of subsection (c). The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines, and interpretations which are necesary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State educational agency.

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ESEA I Sec. 126(d) FEDERAL FUNDS REQUIRED TO SUPPLEMENT NOT SUPPLANT NON-FEDERAL FUNDS FOR CERTAIN SPECIAL STATE AND LOCAL PROGRAMS. - (1) Subject to section 132, a local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for each of the special programs described in subsection (b) of section 131 for the education of educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools and in no case, as to supplant each funds from non-Federal sources. P.L.95-561 11/1/78

NOTE: Section 131 is immediately above in 06.40.

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(2) It shall not be considered a violation of this subsection for a local educational agency, in carrying out a special program described in subsection (b) of section 131, to take into consideration funds made available under this title, and to coordinate such special programs with programs using such Federal funds, provided that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of such special State and local funds that would have been made available, to such children in the absence of funds under this title.

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(3) For purposes of this subsection, the level of funds that, in the absence of funds under this title would have been made available to such children shall be determined by reference to a plan for distributing such special funds. Such plan shall be based on objective criteria of need that do not discriminate against educationally deprived children, in the aggregate in eligible school attendance areas or attending eligible schools. The objective criteria chosen by the local educational agency shall prescribe, with particularity, the childen as well as the schools, grade-spans, or school attendance areas eligible for assistance and the method for selecting the particular children who will receive assistance under such special State or local program and the schools or grade-spans which such children attend or the school attendance areas in which such children reside. The criteria for selecting children, schools, grade-spans, and school attendance areas for participation shall be either educational need, a reasonable proxy for educational need, level of poverty, or a combination of such factors. Educationally deprived children residing in eligible school attendance areas or attending eligible schools, satisfying such object (sic) criteria, must receive assistance under this title or under such special State or local program before any child who does not satisfy such criteria receives such assistance.

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ESEA I Sec. 132 LIMITED EXEMPTION TO SUPPLEMENT, NOT SUPPLANT, REQUIREMENT WHERE CERTAIN SPECIAL PROGRAMS FOR EDUCATIONALLY DEPRIVED CHILDREN ARE FULLY FUNDED. Whenever for a fiscal year-

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(1) a local educational agency provides special State and local funds for programs for educationally deprived children which qualify under clause (A), (B), or (C) of section 131(b) (1) for an exception from the comparability and excess costs provisions under such section 131, and

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(2) the amount of such special State and local funds provided in eligible school attendance areas and for eligible schools when added to the Federal funds provided for programs under this subpart equals the amount such agency is eligible to receive for such fiscal year under section 111(a) (2) (without regard to adjustments under section 193), then the local educational agency may, without being considered in violation of section 126(d), utilize additional State and local funds for special programs and projects which are solely for educationally deprived children residing in nonproject areas or attending nonproject schools, including areas and schools ineligible for assistance under this title. The exemption in the preceding sentence does not apply to the extent the level of such special State and local funds, per child participating in such programs residing in ineligible school attendance areas or attending ineligible schools, exceeds the amount of funds, per child participating in programs in project areas, provided to the agency under this part plus the amount of such special State or local funds provided for use in such areas.

NOTE: As of 1980 funding has never reached this high level.

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N.Y.S.
Commissioner's
Regulations
Part 149
12/24/80

149.3 Expenditures. (a) Each school district shall spend the apportionment of State aid which is attributable to its pupils with special educational needs for educationally advantageous programs for such pupils in accordance with the provisions of this Part and sections 100.1 (f) and 103.2 (c) of this Chapter.

(b) Nothing in this Part shall be construed to prevent the use of funds obtained from other sources in the planning, implementation, or evaluation of locally administered educational programs for pupils with special educational needs, which may include the expansion of existing programs which are consistent with the purpose of this Part. If Federally or privately funded programs in a school district require matching with local funds, such district may claim the amount of State aid which is attributable to pupils with special educational needs as local funds, provided that such programs are operated in accordance with the provisions of this Part.

(c) Pupils with special educational needs may, at the local school district's discretion, remain eligible for educationally advantageous programs until they obtain scores in the fifth stanine on a standardized test or obtain a comparable score on any other acceptable test.

(d) If approved by the commissioner, a part of the State aid apportionment, not to exceed 5% of such apportionment, may be used for administrative and indirect costs attributable to programs and services for pupils with special educational needs.

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P.L.95-561
11/1/78

ESEA I Sec. 126(a) MAINTENANCE OF EFFORT. - (1) Except as provided in paragraph (2), a local educational agency may receive funds under this title for any fiscal year only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures (as determined in accordance with regulations of the Commissioner) of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year.

(2) The Commissioner may waive, for one fiscal year only, the requirements of this subsection if he determines that such a waiver would be equitable due to exceptional and unforeseen circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency. In any case in which a waiver under this paragraph is granted, the Commissioner shall reduce the amount of Federal payment for the program affected for the current fiscal year in the exact proportion to which the amount expended (either on an average per pupil or aggregate basis) was less than the amount required by paragraph (1). No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort required, under paragraph (1), for years subsequent to the year covered by such waiver. Such fiscal effort shall be computed on the basis of the level of funding which would, but for such waiver, have been required.

(3) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this subsection.

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MAINTENANCE OF EFFORT DETERMINATION - GEPA

P.L.94-482
10/12/76

Sec. 431 A. (a) (1) In prescribing regulations for carrying out the requirements of section 403 (a) (11) of the Elementary and Secondary Education Act of 1965 and section 307 (b) of the Adult Education Act, the Commissioner shall-

(A) Determine the amount so expended on the basis of per pupil or aggregate expenditures;

(B) prescribe that the requirement for each such section is met for any fiscal year for which notification is given under subparagraph (C) if, for such year, the fiscal effort per student or the amount expended is not less than the allowable percentage reduction for that agency from its fiscal effort per student or the amount expended by that agency in its base year; and

(C) requires that each agency intending to use the provisions of this section shall notify the Commissioner.

(2) For purposes of paragaraph (1) (B) of this subsection-

(A) an agency's base year for period in which such notification is given by that such base year so determined shall be-

(i) the fiscal year preceding such fiscal year for which notification is given; or

(ii) the second fiscal year preceding such year of notification; and

(B) an agency's allowable percentage reduction for any fiscal year shall be a percentage reduction from the fiscal effort per student or the amount expended in its base year determined by that agency which, when added to the sum of any such percentage reductions previously determined by that agency for purposes of paragraph (1) (B), does not exceed 5 percent. (b) (1) (A) In any case in which exceptional circumstances exist, the Commissioner may, in accordance with the provisions of this subparagraph, waive, for any fiscal year, the requirement of section 403(a) (11) of the Elementary and Secondary Education Act of 1965, of section 307(b) of the Adult Education Act, and of this section, if he determines such waiver to be

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P.L.94-482
10/12/76

equitable in order to reflect such circumstances, including those resulting from decreasing enrollments or fiscal resources of the relevant local educational agency, or the State, or both. In any case in which a waiver under this subparagraph is granted, the Commissioner shall reduce the amount of the Federal payment for the current fiscal year in the exact proportion to which the fiscal effort per student or the amount expended was less than 100 percent for the second preceding fiscal year as required by section 403(a) (11) of the Elementary and Secondary Education Act of 1965, and by section 307 (b) of the Adult Education Act.

(B) In any case in which very exceptional circumstances exist, the Commissioner may waive, for any fiscal year, the requirement of section 403(a) (11) of the Elementary and Secondary Education Act of 1965, of section 307(b) of the Adult Education Act, and of this section, if he determines such waiver to be equitable in order to reflect such circumstances, including those resulting from decreasing enrollments or fiscal resources of the relevant local educational agency, or the State or both.

(2)(A) In any case in which exceptional circumstances exist with respect to a local educational agency, the Commissioner may, in accordance with the provisions of this subparagraph, waive, for one fiscal year only with respect to such local educational agency, the requirement of section 143(c) (2) of the Elementary and Secondary Education Act of 1965 if he determines such waiver to be equitable in order to reflect such circumstances, including those resulting from decreasing enrollments or fiscal resources of the relevant local educational agency or the State, or both. In any case in which a waiver under this subparagraph is granted, the Commissioner shall, for one fiscal year only, reduce the amount of the Federal payment for the current fiscal year in the exact proportion to which the fiscal effort per student of that agency or the amount expended by that agency was less than 100 percent of the second preceding fiscal year as required by section 143(c) (2) of the Elementary and Secondary Education Act of 1965.

(B) In any case in which very exceptional circumstances exist with respect to a local educational agency, the Commissioner may waive for one fiscal year only, with respect to such local educational agency the requirement of section 143(c) (2) of the Elementary and Secondary Education Act of 1965 if he determines such waiver to be equitable in order to reflect such circumstances, including those from decreasing enrollments or fiscal resources of such local educational agency.

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(3) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this subsection.

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10/12/76

(c) This section shall be effective with respect to each requirement to which it applies, during the period which begins on the date of the enactment of the Education Amendment of 1976, and ends on the date of termination of the program to which the requirement applies. For purposes of the preceding sentence, a program shall be considered to terminate on September 30 of the fiscal year, if any, during which such program is automatically extended pursuant to section 414 of the General Education Provisions Act.

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ESEA I Sec. 126 (e) COMPARABILITY OF SERVICES. - Subject to the provisions of section 131, a local educational agency may receive funds under this title only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title. Where, under regulations of the Commissioner, all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable, in accordance with regulations of the Commissioner, in each project area. Each local educational agency shall report on or before July 1 of each year with respect to its compliance with this subsection, except for local educational agencies which were not required to report upon the date of enactment of the Education Amendments of 1978, unless the Commissioner otherwise provides by regulation.

P.L.95-561
11/1/78

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EXCLUSIONS FROM EXCESS COSTS AND COMPARABILITY PROVISIONS FOR CERTAIN SPECIAL STATE AND LOCAL PROGRAMS

P.L.95-561
11/1/78

ESEA I Sec. 131 (a) IN GENERAL. - For the purpose of determining compliance with the requirement of section 126(b) (relating to use of funds only for excess costs of programs and projects) and of section 126(e) (relating to comparability of services), a local educational agency may, at its option, exclude State and local funds expended for carrying out a special program or a State phase-in program.

(b) SPECIAL PROGRAM AND STATE PHASE-IN PROGRAM DEFINED. - For purposes of this section-

(1) a special program is limited to-

(A) a State compensatory education program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (c) and which the State educational agency determines is being implemented by the local educational agency in accordance with subsection (c);

(B) a State compensatory education program which the Commissioner has determined in advance under subsection (e) does not satisfy the requirements of subsection (c), but which he has determined permits the local educational agency, at its option, to use such special State funds in accordance with subsection (c), provided that the local educational agency designs a program which the State educational agency determines in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines will be implemented by the local educational agencies in accordance with subsection (c); or

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(C) a local compensatory education program which the State educational agency has determined in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines is being implemented in accordance with subsection (c); and

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(D) a bilingual program for children of limited English proficiency or special educational program for handicapped children or children with specific learning disabilities; and

(2) a State phase-in program is a program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (d) and which the State educational agency determines will be implemented by local educational agencies in accordance with subsection (d).

(c) STATE AND LOCAL COMPENSATORY EDUCATION PROGRAMS SIMILAR TO TITLE I PROGRAMS. - A State or local program meets the requirements of this subsection if it is similar to programs assisted under this part. The Commissioner shall consider a State or local program to be similar to programs assisted under this part if-

NOTE: PSEN meets the requirements of Sec. 131(c).

(1) all children participating in the program are educationally deprived,

(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2), and (3) of this subsection, and

(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3), and (4) of this subsection are met.

(d) CERTAIN STATE PHASE-IN PROGRAMS. - A State education program which is being phased into full operation meets the requirements of this subsection if the Commissioner is satisfied that-

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(1) the program is authorized and governed specifically by the provisions of State law;

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(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

(3) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

(4) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

(5) the program will benefit all children in a particular school or grade-span within a school;

(6) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to the date of enactment of the Education Amendments of 1978 shall be deemed to begin on the date of enactment of such Amendments;

(8) at all times during such phase-in period at least 50 per centum of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program;

(10) the local educational agency is separately accountable, for purposes of compliance with paragraphs (1) through (6), (8), and (9) of this subsection, to the State educational agency for any funds expended for such program; and

(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8), and (9) and the State educational agency is complying with paragraph (10).

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(e) ADVANCE DETERMINATIONS BY THE COMMISSIONER. - The Commissioner shall make an advance determination of whether or not a State Program described in subsection (b) (1) (A) or (B) or (b)(2) meets the requirements of subsection (c) or meets the requirements of subsection (d). The Commissioner shall require each State educational agency to submit to him the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for him to make such an advance determination. The Commissioner's determination shall be in writing and shall include the reasons for his determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Commissioner.

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(f) ADVANCE DETERMINATION BY THE STATE EDUCATIONAL AGENCY. - The State educational agency shall make an advance determination of whether or not a program described in subsection (b) (1) (C) meets the requirements of subsection (c). The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines, and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State educational agency.

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FINANCE, SCHOOLWIDE PROJECTS (75% SCHOOLS)

P.L.95-561
11/1/78

ESEA I Sec. 133 (a) USE OF FUNDS FOR SCHOOLWIDE PROJECTS. In the case of any school serving an attendance area that is eligible to receive services under this title and in which not less than 75 per centum of the children are from low-income families (in accordance with criteria established by the Commissioner), the local educational agency may carry out a project under this title to upgrade the entire educational program in that school if the requirements of subsection (b) are met.

(b) DESIGNATION OF SCHOOLS. - A school may be designated for a schoolwide project under subsection (a) if-

(1) a plan has been developed for that school by the local educational agency and has been approved by the state educational agency providing for-

(A) a comprehensive assessment of the educational needs of all students in the school, in particular the special needs of educationally deprived children, and

(B) an instructional program designed to meet the special needs of all students in the school;

(2) the plan has been developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

(3) the plan provides for consultation among those individuals as to the educational progress of all students;

(4) the plan has been approved by the advisory council for that school established under section 125;

(5) appropriate training is provided to teachers and teacher aides to enable them effectively to carry out the plan;

(6) the plan includes procedures for evaluation involving the participation of the individuals listed in paragraph (2), and opportunities for periodic improvements in the plan based on the results of those evaluations;

(7) (A) in the case of a school district in which there are one or more schools described in subsection (a) and there are also one or more other schools serving project areas, the local educational agency makes the Federal funds provided under this part available for children in such schools described in subsection (a) in amounts which per educationally deprived child served, equal or exceed the amount of such funds made available per educationally deprived child served in such other schools;

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(B) the local educational agency makes special supplementary State and local funds available for the children in schools described in subsection (a) in amounts which, per child served who is not educationally deprived, equal or exceed the amount of Federal funds provided under this part which, per educationally deprived child served, are made available for children in such schools; and

(C) the average per pupil expenditure in schools described in subsection (a) (excluding amounts expended under a State compensatory education program) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year.

(c) APPROVAL OF SCHOOL; OPERATION OF PROJECT. -(1) The State educational agency shall approve the plan of any local educational agency for a schoolwide project if that plan meets the requirements of subsection (b).

(2) For any school which has such a plan approved, the local educational agency-

(A) shall, in order to carry out the plan, be relieved of any requirements under this title with respect to the commingling of funds provided under this title with funds available for regular programs;

(B) shall not be required to identify particular children as being eligible to participate in programs assisted under this title; and

(C) shall not be required to demonstrate that services provided with funds under this title are supplementary to the services regularly provided in the school.

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FINANCE, REALLOCATION OF FUNDS & CARRYOVER

ESEA Title I Regulations of 1976, Section 116a.11 and the Education Amendments of 1978, Public Law 95-561 Section 193(b) (2), authorize the New York State Commissioner of Education to reallocate to other education agencies funds in excess of the amount necessary to implement approved ESEA Title I projects. High carryover amounts are detrimental to requests for continued increases in federal aid. The accumulation of carryover funds suggests that eligible pupils have not received comprehensive services during the year in which the funds were initially available to support remedial services...

N.Y.S.
Assistant
Commissioner's
memo to the
field March 1979

The amount released should result in a carryover balance not to exceed 10% of the total ESEA Title I funds available to the district during the current federal fiscal year. All excess funds will be pooled by the Department for redistribution to other eligible school districts.

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ESEA I Sec. 193(b) (2) ...If the maximum grant a local educational agency would receive (after any ratable reduction which may have been required under the first sentence of subsection (a) of this section is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Commissioner, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available shall be made by the State educational agency in furtherance of the purposes of this title in accordance with criteria prescribed by the Commissioner which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 111(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding two sentences of this section, such excess amounts shall be distributed among the other States as the Commissioner shall prescribe for use by local educational agencies in such States for the purposes of this title in such manner as the respective State educational agencies shall prescribe.

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P.L.94-482
10/12/76

General Education
Provisions Act
as amended
P.L.95-561
11/1/78
Sec. 1245

GEPA Sec. 412 (b) (i) Notwithstanding any other provisions of Law, unless enacted in specific limitation of this subsection, any funds from appropriations to carry out any programs to which this title is applicable during any fiscal year, which are not obligated and expended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which the funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such fiscal year.

(2) Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with-

(A) The Federal statutory and regulatory provisions relating to such programs which are in effect for such succeeding fiscal year, and

(B) any program plan or application submitted by such educational agencies or institutions for such programs for such succeeding fiscal year.

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EDGAR
5/4/79

EDGAR S100b.705 Funds may be obligated during a "carryover period."

(a) if any grant funds are not obligated by a State or a subgrantee by the end of the fiscal year for which Congress appropriated the funds, it may obligate the funds during a carryover period of one additional fiscal year.

(b) the State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantee.

S100b.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with-

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

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(b) Any State plan, application, or other document that the program statute and regulations require the State or subgrantee to submit for the carryover period.

EDGAR
5/4/79

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FINANCE, WITHHOLDING OF FUNDS AND RECOVERY OF FUNDS

N.Y.S. Education Law as amended by Chapter 241 of the Laws of New York 1974

Sec. 3602 Subdivision 10a - A district which spends any part of its total annual apportionment attributable to such pupils in an unauthorized manner in the base year shall have its current year apportionment reduced by the amount of such unauthorized expenditures in the base year; provided, that no such reduction shall result from the expenditure of apportionments made for the school year commencing July first, nineteen hundred seventy-four for pupils with special educational needs.

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11/1/78

ESEA LAW Sec. 169. (a) WITHHOLDING. Whenever a State educational agency, after reasonable notice and opportunity for a hearing (consistent with the requirements of section 434(b) of the General Education Provisions Act) to any local educational agency or State agency, before an impartial decisionmaker, finds that there has been a failure to comply substantially with any provision of subpart 3 of part A or subpart 2 or 3 of part B, the State educational agency shall notify such agency that further payments, in whole or in part, will not be made to it under this title until it is satisfied that there is no longer any such failure to comply. Until it is so satisfied, no further payments shall be made to such agency under this title, except as may be provided in a compliance agreement entered into under subsection (c). Pending the outcome of any proceeding under this subsection, the State educational agency may suspend, in whole or in part, payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.

(b) NOTICE TO PUBLIC OF STATE WITHHOLDING - Upon submission to a local educational agency or a State agency of a notice that the State educational agency pursuant to subsection (a) is withholding payment, the State educational agency shall inform the district advisory council (if any) and shall take such additional action as may be necessary to bring the State action to the attention of the public.

(c) COMPLIANCE AGREEMENTS. - A State educational agency may suspend the initiation or continuation of its withholding action under subsection (a) while there is in effect a compliance agreement with the local educational agency or State agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the local educational agency or State agency fails to comply with the terms agreed to, such agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the State educational agency shall take into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term 'compliance agreement' means an agreement which-

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(1) sets forth the terms and conditions to which the local educational agency or State agency has agreed in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder, and with applicable rules, regulations, procedures, guidelines, criteria or other requirements adopted by the State educational agency; and

(2) addresses all the matters that formed the basis for the initiation of the withholding action by the State educational agency; and

(3) may consist of a series of agreements that in the aggregate dispose of all such matters. Within fifteen days after the execution of any compliance agreement, the State educational agency shall send a copy thereof to the district advisory council affected, and to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

(d) REVIEW BY THE COMMISSIONER. - A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (a) to the Commissioner.

NOTE: GEPA Section 425 is under 07.10.

Sec. 170. (a) AUDITING. - Each State shall make provision for audits of the expenditure of funds received under this title to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant. Such audits shall be made with reasonable frequency considering the nature, size, and complexity of the activity.

(b) AUDIT RESOLUTION. - Each State educational agency shall have in effect written procedures meeting minimum standards established by the Commissioner, to assure timely and appropriate resolutions of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include a description of the audit resolution process, timetables for each step of the process, and an audit appeals process. Whenever under such procedures, the audit resolution process requires the repayment of Federal funds which were misspent or misapplied, such repayment may be made in either a single payment or in installments over a period not to exceed three years.

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(c) REQUIREMENT FOR REPAYMENT. - A local educational agency or State agency shall repay from non-Federal sources or from Federal funds, no accountability for which is required to the Federal Government, the amount of funds under this title which have been finally determined through the audit resolution process to have been misspent or misapplied.

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(d) REVIEW BY THE COMMISSIONER. - A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (b) to the Commissioner.

(e) FAILURE TO REPAY. - If, following an affirmation by the Commissioner of a final determination of a State educational agency under subsection (b) or failure by a local educational agency or State agency to seek timely review by the Commissioner, such local educational agency or State agency refuses to repay from non-Federal sources, or from Federal funds no accountability for which is required to the Federal Government, funds which have been misspent or misapplied under this title, the State educational agency shall promptly notify the Commissioner and the Commissioner shall promptly initiate collection action.

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N.Y.S. Education Law, Section 3604 Subdivision 11, Notwithstanding any other provision of law the commissioner shall withhold the apportionment due to any school district when such school district fails to submit, in a timely and proper fashion, the reports required by the commissioner to calculate such apportionments.

Chapter 241.
NYS Laws
of 1974

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IV. AUDITS AND AUDIT RESOLUTION

A. SCOPE

New York State
Monitoring and
Enforcement
Plan
1979-80
1980-81
1981-82

The Division of Educational Finance, Management and School Services of the New York State Education Department will audit Title I projects. Each audit will result in a report to the transactions and reports and the projects compliance with applicable Title I requirements.

Procedures

Article V of the State Constitution provides for .pre-audit specifying that the State Comptroller is required "... to audit all vouchers before payment of all official records." This is accomplished at the State level prior to the payment of final programs or projects. A pre-audit by the Division of Educational Finance is done under the supervision of professional staff members who are specialists in both education and financial administration. The final claim for reimbursement received from the local agency is first audited in the Division of Educational Finance and then reaudited by the State Department of Audit and Control before final reimbursement is made from federal funds. Any audit exceptions cited by the Division of Educational Finance and/or the Department of Audit and Control are reconciled prior to final payment.

All school districts employing eight or more teachers are required by the New York State Education Law, to obtain an annual independent audit. The independent audits are filed with the Department, where they are reviewed for completeness and to discover discrepancies. Field examinations will be conducted by the State Education Department when discrepancies are discovered. Complete field audit reviews by the staff of the Division of Educational Management Services are also conducted on a selective basis. All independent audits and field audits will be on file in this Division.

In addition, the Department of Audit and Control will field audit the fiscal records of the local public agencies claiming expenditures for federal financial participation. This audit will be made at no less than two year intervals with each annual fiscal period covered, and copies will be available in the offices of the State Education Department and the Department of Audit and Control.

The on-site audit procedures are attached to this report. In summary, on-site audit of local education agencies is conducted in accordance with accepted auditing standards for field-work issued by Federal and State agencies.

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New York State
Monitoring and
Enforcement
Plan
1979-80
1980-81
1981-82

The process of initial selection of a local educational agency for an on-site audit during the first year of a two year cycle may be based on one or more factors:

1. The audit report prepared by the State Department of Audit and Control;
2. The independent annual audit report;
3. Administrative management surveys prepared by the Bureau of General Educational Management Services;
4. Recommendations by program monitors;
5. Size and complexity of the grant program.

The primary objectives of these examinations are to:

1. Document the proper receipt; disbursement and accounting of federal funds;
2. Ascertain compliance with legal and regulatory requirements;
3. Evaluate the system of internal controls for adequacy and effectiveness.

B. FREQUENCY

On site audits will be made at no less than two year intervals to LEAs conducting ESEA Title I programs and State agencies conducting programs for neglected and delinquent children.

1. Audit Resolution

"The New York State Education Department has adopted procedures to assure timely resolution of audits of ESEA Title I projects in accordance with Section 170 of Title I."

2. Audit Resolution Process

The State Education Department within 30 days after receiving an audit report will send the report to the audited agency and to the appropriate advisory committee.

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New York State
Monitoring and
Enforcement
Plan
1979-80
1980-81
1981-82

Upon determination by the State Education Department of an audit exception, the local educational agency will be notified and given the opportunity to provide additional information within 15 calendar days from the postmark date of the written letter of notification.

If the local educational agency does not respond within 15 calendar days from the postmark date of the letter of notification, the audit findings will be presented by the State Education Department to the Department of Audit and Control for verification.

The State Education Department within 45 days of receiving the response will make final determinations of the findings and notifying the audited agency, in writing, of the required corrective action, including necessary refunds. This written notification will include an explanation of the audited agency's right to appeal to the Department for a hearing on the Department's final determination.

3. Audit Appeals Process

If the local educational agency does respond but the response is inadequate to justify reversing the audit exception, and the local educational agency wishes to appeal the audit exception to a higher authority, the local educational agency will have an additional 15 calendar days within which it may make such appeal.

The first level of appeal will be to the Assistant Director for Federally Aided Programs of the Division of Educational Finance and will involve a written request for an administrative review. If the audit exception is upheld and the local educational agency wishes to appeal to a higher level, the local educational agency must do so within 15 calendar days and such request must be in written form.

The State Education Agency will require the audited agency within 15 calendar days to take corrective action or to notify the State Education Agency of its intention to appeal to the Commissioner under Section 425 of the General Education Provisions Act.

"The New York State Education Department will enforce the requirements of Section 170(c) of Title I and comply with the requirements of Section 170(e) of Title I."

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P.L.95-561
11/1/79

ESEA I Sec. 121 LOCAL PROGRAM APPLICATION - A local educational agency may receive a grant under this title for any fiscal year if it has on file with the State educational agency a current application, approved by the State educational agency, describing the programs and projects to be conducted with assistance provided under this title for a period of not to exceed three fiscal years, including the fiscal year for which the grant is to be made. Such an application may be amended at any time to describe changes in or additions to the activities originally set forth in the application. An application or amendment thereto shall be approved by the State educational agency upon its determination that the application provides for the use of such funds in a manner which meets the requirements of this subpart and is consistent with the assurances contained in the general application required by section 436 of the General Education Provisions Act, subject to such basic criteria as the Commissioner may prescribe.

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P.L.93-380
8/21/74

GEPA Sec. 436.(a)
Single Local Educational Agency Application

Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by that local education agency in all such programs.

> NOTE: This is covered in New York State by the District General Compliance Form (General Application for FEDERAL FUNDS FOR ASSISTANCE to LOCAL EDUCATIONAL AGENCIES) available from the Division of Educational Opportunities Programs, NYSED.

(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances-

(1) that the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

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(4) that the local educational agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;

(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

P.L.93-380
8/24/74

(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) that in the case of any project involving construction-

(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

(B) in developing plans for construciton, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under section 504 of that Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals; and

(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

NOTE: SECTION 502 of the Education Amendments of 1978 has nearly identical wording covering all of ESEA. The only substantive addition follows (7)(B) above:

P.L.95-561
11/1/79

(C) in developing plans for such facilities, due consideration has been given to excellence of architecture and design, and inclusion of works of art (not representing more than 1 per centum of the cost of the project); and

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N.Y.S.
Assistant
Commissioner's
Memo to the
Field
June 1979

Section 436 of the General Education Provisions Act and Section 502 of the Education Amendments of 1978 (P.L. 95-561) require that any local education agency which desires to participate in programs where Federal Funds are made available to LEA's through a State agency shall submit to the State agency a Geneal Compliance Form with respect to the particular programs in which that local education agency wishes to participate. The General Compliance Form covers the participation by the local education agency in all such programs and remains in effect for the duration of the programs it covers. The resubmission of a General Compliance Form which has been filed with the State will not be required unless the local education agency wishes to change the programs in which it desires to participate. by adding or deleting programs for which the required assurances are given, or unless requred by changes in Federal or State Laws or by other significant change in the circumstances affecting an assurance in such application. Approval of the General Compliance Form is required before grant awards may be issued for the programs to which Section 436 applies. Therefore, it should be submtted as soon as possible, but not later than June 29, 1979. The applicable statutes to which the form refers are:

Federal:
- Education Amendments of 1978-P.L. 95-561, Elementary. Secondary Education Act
- General Education Provisions Act
- Title VI, Civil Rights Act of 1964
- Title VII, Civil Rights Act of 1964 as amended by Equal Opportunity Act of 1972
- Right to Privacy Act
- Freedom of Information Act
- Equal Pay Act of 1963 as amended by Education Amendments of 1972
- Title IX. Education Amendments of 1972 (Prohibition of Sex Discrimination) Section 504, Rehabilitation Act of 1973 (Prohibition of Discrimination on Basis of Handicap)

State:
- Public Officers law, Article VI (Freedom of Information)
- Public Officers Law, Article VII (Open Meeting Law)
- Executive Law, Article XV (Human Rights Law)

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N.Y.S.
Education Law
as amended
1974

N.Y.S. Education law, Section 3602

10.a Program approval requirements. Any school district receiving an apportionment partially attributable to the weightings provides in subdivision nine of this section for pupils with special educational needs or for pupils with handicapping conditions and any school district receiving an additional apportionment pursuant to subdivision seventeen of this section for severely handicapped pupils or for pupils in occupational education programs shall use the total apportionment attributable to such pupils for locally administered programs for such pupils in accordance with regulations issued by the commissioner. Such regulations shall provide for the use of such apportionment in the manner determined by the commissioner to be the most educationally advantageous for such pupils; and such regulations shall also include annual district reporting requirements which shall require the identification of such pupils, a statement describing the expenditure of the preceding year's apportionment for such pupils and an evaluation of the results obtained from such expenditures; provided, that in any district which has its total apportionment for the school year commencing July first, nineteen hundred seventy-four limited by the provisions of section nine of this act, such regulation shall only apply for such year to an amount computed by multiplying the district's total apportionment for such year as limited by such section by the ratio that the portion of the district's total apportionment unlimited by such section attributable to such pupils bears to the district's total apportionment unlimited by such section. A district which spends any part of its total annual apportionment attributable to such pupils in an unauthorized manner in the base year shall have its current year apportionment reduced by the amount of such unauthorized expenditures in the base year; provided, that no such reduction shall result from the expenditure of apportionments made for the school year commencing July first, nineteen hundred seventy-four for pupils with special educational needs.

b. District plans. Any school district receiving an apportionment partically attributable to the weightings provided in subdivision nine of this section for pupils with special educational needs or for pupils with handicapping conditions and any school district receiving an additional apportionment pursuant to subdivision seventeen of this section for severely handicapped pupils or for pupils in occupational education programs shall, prior to September first, nineteen hundred seventy-four and every third year thereafter, submit to the commissioner an acceptable plan describing the expected use of such apportionment and the expected impact of the proposed plan. Such plan shall be in a form prescribed by the commissioner, and except as heretofore provided, shall have the content prescribed by the commissioner. The commissioner may, from time to time, require amendments of such plans when he deems such amendments to be necessary and appropriate to further the educational welfare of the pupils invovled.

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NOTE: The District Plan is now part of the comprehensive District Plan for remediation and Bilingual education.

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Section 425
General Education
Provisions Act
4/21/76

Sec. 425(a) REVIEW OF APPLICATIONS. In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be expended in accordance with a State plan approved by the Commissioner and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965, any applicant or recipient aggrieved by the final action of the State educational agency, and alleging a violation of State or Federal law; rules, regulations, or guidelines governing the applicable program, in (1) disapproving or failing to approve its application or programs in whole or part, (2) failing to provide funds in amounts in accord with the requirements of laws and regulations, or (3) terminating further assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request, the State educational agency shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing the State educational agency shall issue its written ruling, including reasons therefore. If it determines such final action was contrary to Federal or State law, or the rules, regulations, and guidelines, governing such applicable program it shall rescind such final action.

(b) Any applicant or recipient aggrieved by the failure to a State educational agency to rescind its final action after a review under such subsection (a) may appeal such action to the Commissioner. An appeal under this subsection may be taken only if notice of such appeal is filed with the Commissioner within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its review under subsection (a). If, on such appeal, the Commissioner determines the final action of the State educational agency was contrary to Federal law, or the rules, regulations, and guidelines governing the applicable program, he shall issue an order to the State educational agency prescribing appropraite action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Commissioner may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

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(c) Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

Section 425
General Education
Provisions Act
4/21/76

(d) If any State educational agency fails or refuses to comply with any provision of this section, or with any order of the Commissioner under subsection (b), the Commissioner shall forthwith terminate all assistance to the state educational agency under the applicable program affected.

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P.L.95-561
11/1/78

ESEA I Sec. 122 DESIGNATING SCHOOL ATTENDANCE AREAS (a) GENERAL PROVISIONS. (1) Except as provided in paragraph (2) and subsections (b), (c), (d), and (e) of this section, a local educational agency shall use funds received under this title in school attendance areas having high concentrations of children from low--income families (hereinafter referred to as 'eligible school attendance area'), and where funds under this title are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest, according to relative degree of concentration of children from low-income families. A local educational agency may carry on a program or project assisted under this title in an eligible school attendance areas only if it also carries on such program or project in all other eligible school attendance areas which are ranked higher under the first sentence. A local educational agency may designate any school attendance area in which at least 25 per centum of the children are from low-income families as an eligible school attendance area if the aggregate amount expended under this title and under a State program meeting the requirements of section 131(c) in that fiscal year in each school attendance area of that agency in which projects assisted under this title were carried out in the preceding fiscal year equals or exceeds the amount expended from those sources in that area in such preceding fiscal year. The same measure of low income, which shall be chosen by the local educational agency and which may be a composite of several indicators, shall be used with respect to all such areas, both to identify the areas having high concentrations of chidlren from low-income families and to determine the ranking of each area.

(2)(A) Notwithstanding the provisions of paragraph (1), in the selection of eligible school attendance areas, a local educational agency may, subject to the requirements of subparagraph (B), choose to rank all its school attendance areas as provided in paragraph (1) and also rank all its school attendance areas according to educational deprivation, and then serve all its school attendance areas ranked according to paragraph (1) in the order of their ranking under such paragraph unless another school attendance area ranked according to education deprivation has a substantially greater number or a substantially greater percentage of educationally deprived children, in which case such school attendance area may be served before service is provided to other school attendance areas ranked pursuant to paragraph (1) which have a substantially smaller number or substantially smaller percenage of educationally deprived children. In the event that a local educational agency chooses to exercise the option provided under this paragraph, it shall not serve any more school attendance areas than the number identified pursuant to paragraph (1).

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P.L.95-561
11/1/78

(B) Any local educational agency desiring to use the alternative ranking system described in subparagraph (A) shall, with the consent of the district-wide parent advisory council of that agency, apply for permission to use such system to the State educational agency of the State wherein such local educational agency is located. Such application shall be approved by such state educational agency only if such State educational agency finds that the use of such alternative ranking system will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by such local educational agency. Whenever a school district exercises the option under this paragraph and actually serves one or more school attendance areas ranked under this paragraph, none of the areas so ranked but not served shall be considered to be eligible school attendance areas under this title.

(b)USE OF ENROLLMENT DATA IN CERTAIN SCHOOLS.-A local educational agency may use funds received under this title for educationally deprived children who are in a school of such agency which is not located in an eligible school attendance area, but at which the proportion of children in actual average daily attendance who are from low-income families is substantially the same as the proportion of such children in such an area of that agency (hereinafter referred to as an 'eligible school').

(c) CONTINUATION OF ELIGIBILITY FOR CERTAIN SCHOOL ATTENDANCE AREAS OR SCHOOLS. - An eligible school attendance area or an eligible school may be designated a project area under subsection (a) or a project school under subsection (b) for a fiscal year, even though it does not qualify under such subsections for that fiscal year, if such area or school was so designated in either of the two preceding fiscal years.

(d) LOWER RANKED SCHOOL ATTENDANCE AREAS OR SCHOOLS HAVING SUBSTANTIALLY GREATER INCIDENCES OF EDUCATIONALLY DEPRIVED CHILDREN THAN HIGHER RANKED AREAS OR SCHOOLS. - The Commissioner shall issue regulations providing for an exception to subsection (a) permitting children in lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than areas or schools ranked higher under subsections (a) or (b) to receive assistance before such children in higher ranked areas or schools receive such assistance.

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P.L.95-561
11/1/78

(e) SKIPPING HIGHER RANKED SCHOOL ATTENDANCE AREAS OR SCHOOLS RECEIVING SERVICES OF THE SAME NATURE AND SCOPE FROM NON-FEDERAL SOURCES. -The Commissioner shall issue regulations providing for an exception to subsection (a) or (b) permitting local educational agencies to skip higher ranked eligible school attendance areas or eligible schools receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this title. Whenever children residing in eligible areas and attending private elementary and secondary schools are ineligible for services of the same nature and scope from non-Federal sources, such children shall be selected for programs and projects under this title without regard to the provisions of this subsection. The number of children receiving services under this title who attend private elementary and secondary schools shall be determined in each local educational agency receiving assistance under this title without regard to non-Federal compensatory education funds which serve children in public elementary and secondary schools who are also eligible for assistance under this title. Children attending private elementary and secondry schools who receive assistance under this title shall be identified in accordance with this section and without regard to skipping higher ranked school attendance areas or schools receiving services of the same nature and scope from non-Federal sources.

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PROCEDURES, RECORDS TO BE KEPT

ESEA I Sec. 127 (a). RECORDKEEPING. - Each local educational agency which receives funds under this title shall keep such records and afford such access thereto as the State educational agency shall prescribe, including records which fully disclose the amount and disposition of such funds, the total cost of programs and projects in connection with which such funds are used, the amount of the portion of the cost of the programs or project supplied by other sources, and such other records as will facilitate an effective audit. Whenever a local educational agency carries on a single compensatory education program paid for out of funds under this title as well as State or local funds which meets all of the requirements of this title and whenever, under section 131, the local educational agency excludes expenditures from State and local sources in determining compliance with section 126(b) and (e), the State educational agency need not require the Federal funds to be accounted for separately. In any proceeding, State or Federal, for the recoupment of any such funds which were misspent or misapplied the percentage of the funds so misspent or misapplied which shall be deemed to be Federal funds shall be equal to the percentage of the funds used, or intended for use, for the program or project which were Federal funds.

P.L.95-561
11/1/78

(b) REPORTING. Each local educational agency which receives funds under this title shall make an annual report and such other reports to the State educational agency, in such form and containing such information (which in the case of reports relating to performance is in accordance with specific performance criteria related to program objectives), as may be reasonably necessary to enable the State educational agency to perform its duties under this title, including information relating to the educational achievement of students participating in programs and projects assisted under this title.

(c) ACCESS TO INFORMATION. - Each local educational agency which applies for or receives funds under this title shall make the application and all pertinent documents related thereto available to parents, teachers, and other members of the general public.

NOTE: State Law requires separate accounting for State and Federal moneys.

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Part 149.7 (b) Appropriate individual records of each pupil with special educational needs shall be kept in the school. Records of the operation of each program shall be kept in each school district and submitted whenever required by the Commissioner.

N.Y.S.
Commissioner's
Regulations
Part 149
12/24/80

continued

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NOTE: Public Officers Law of N.Y. Section 65-a and 65-b, Part 185 of N.Y.S. Commissioner of Education Regulation and Schedule 1-S-1 set forth requirements for the retention of records. These are available from:

State Archives
The State Education Department
Cultural Education Center
Albany, New York 12230

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II-F Records

Guidelines
and
Instructions
for the
Comprehensive
District
Plan...
1980-81
NYSED

All informtion reported in the application is subject to verification by school, State, and Federal program officials. Written records, including raw data, should be maintained at the building level and district level for use by officials when requested. All records including information resulting in Federal aid payments should be maintained in a safe environment for a minimum of five years. State records should be retained in a safe environment for a minimum of seven years, nine months.

Individual records with entries by both regular and remedial teachers and other appropriate staff should be maintained for each student. The individual records should be available to both regular and remedial teachers as well as other officials. In addition to a diagnostic profile and the rationale for the material/method selected, the records should include:

1. Specific learning objectives for the student.
2. Listing of materials and activities in use.
3. Evidence of student's progress.
4. Results of pre- and posttests.
5. Evidence that the student's remedial programs are part of a comprehensive instructional package.
6. Other information considered relevant by teachers.

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N.Y.S.
Commissioner's
Regulations
Part 149
12/24/80

149.6 Annual report. Each school district shall submit to the commissioner complete annual reports in a form and at a time prescribed by the commissioner. Such reports shall include, but not be limited to the following:

(a) a description of the expenditure of the preceding year's apportionment of aid for eligible pupils;

(b) the number of pupils with special educational needs served in the programs and how they were identified as pupils having such needs;

(c) an evaluation of the results obtained from the operation of such programs.

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PROCEDURES, ACCESS TO INFORMATION

ESEA I Sec. 124h. INFORMATION DISSEMINATION. - A local educational agency may receive funds under this title only if effective procedures are in existence for acquiring and disseminating to teachers and administrators significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

P.L.95-561
11/1/78

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ESEA Sec. 125 (c) ACCESS TO INFORMATION. - (1) Each local educational agency shall provide without charge to each advisory council established by such an agency under subsection (a) of this section and upon request, to each member of such advisory council -

P.L.95-561
11/1/78
as amended by
P.L.96-46
8/6/79

(A) a copy of the text of this title,

(B) a copy of any Federal regulations and guidelines issued under such title; and

(C) a copy of appropriate State regulations and guidelines associated with this title.

(2) Each State educational agency shall provide a copy of any report resulting from State or Federal auditing, monitoring, or evaluation activities in any district to the parent advisory council established pursuant to subsection (a)(1) in such district.

(d) TRAINING PROGRAMS. - Each local educational agency application for funding under this title shall describe a program for training the members of advisory councils established pursuant to subsection (a) to carry out their responsibilities as described in subsection (b). Such training program -

(1) shall be planned in full consultation with the members of such advisory councils;

(2) shall provide each member of each such council with appropriate training materials; and

(3) may permit the use of funds under this title for expenses associated with such training, including expenses associated with the attendance of such members at training sessions.

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- Title I documents are public information. Such documents include the completed application with budget. job description and program description, evaluation reports. comparability information and other reports.

- Documents of a personal nature or student records may be available according to the Freedom of Information law and/or the Right ot Privary Act.

ESEA I
State Policies
and
Federal Guidelines
for Eduation
of the
Disadvantaged
(selected summary)
NYSED-1978

NOTE: See GEPA 438 in 02.20. page 1 of this compilation

- Written requests for copies of documents which will require reproduction must be submitted in advance of the date needed.

- A nominal fee may be charged for the duplication of documents.

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GEPA Sec. 439 PROTECTION OF PUPIL RIGHTS - All instructional material. including teacher's manuals. films, tapes. or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

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8/21/74

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P.L.95-561
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ESEA I Sec. 128 Each local educational agency which receives funds under this title shall develop and implement, in accordance with criteria prescribed by the Commissioner, written procedures for the resolution of complaints made to that agency by parent advisory councils, parents, teachers, or other concerned organizations or individuals concerning violations of this title, or of applicable provisions of the General Education Provisions Act in connection with programs under this title. Such procedures shall-

(1) provide specific time limits for investigation and resolution of complaints, which shall not exceed thirty days unless a longer period of time is provided by the State educational agency due to exceptional circumstances in accordance with regulations established by the Commissioner;

(2) provide an opportunity for the complainant or the complainant's representative, or both, to present evidence, including an opportunity to question parties involved;

(3) provide the right to appeal the final resolution of the local educational agency to the State educational agency within thirty days after receipt of the written decision; and

(4) provide for the dissemination of information concerning these procedures to interested parties, including all district and school parent advisory councils.

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III. COMPLAINT RESOLUTION

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The New York State Education Department has adopted written procedures for receiving complaints and reviewing appeals with respect to complaints. Those procedures meet the requirements of Section 168 of Title I. The New York State Education Department will enforce the requirements of Section 128 of Title I.

- Complaints must be in writing and signed by the complainant.
- Complaints must be sent to the appropriate ESEA Title I regional office.

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- Complaints will be brought to resolution within 60 days from the date on which the complaint was received in the appropriate ESEA Title I regional office. In the event unforeseen circumstances preclude resolution within 60 days, written interim progress reports will be made to the U.S. Commissioner of Education which indicate continuing problems and project actions and timeline for resolution.

- Copies of correspondence, related documents, investigative reports, and summary reports involved in the complaint resolution process will be maintained in the State Education Department Division of Federal Education Opportunity Programs. These files will be open for inspection in accordance with the provisions of the New York State Freedom of Information Law.

- Within 5 days after receipt of a complaint in the appropriate regional office, a bureau chief in the State Education Department Division of Federal Education Opportunity programs, or his designated staff representative, will provide to the complainant, the council chairperson, a written summary of the complaint and notice of the procedures to be followed in resolving the complaint.

- Within 10 days after receipt of a complaint, the bureau chief or designee responsible for investigating the complaint shall conclude the investigation and contact the parties to the dispute relative to a proposed resolution of the matter. Such resolution, if satisfactory to the parties to the dispute, shall be implemented by the appropriate parties.

- Where the matter has not been resolved by the bureau chief or the designee, the complaint shall be referred immediately to a review panel consisting of an assistant commissioner and two other administrative staff members in the State Education Department, designated by the New York Commissioner of Education.

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- The parties to the dispute shall receive written notification from the bureau chief or designee that the complaint has been referred to a review panel. Within 10 days of the date such notice is issued, the complainant or the local education agency may request, in writing, an opportunity to present evidence, including an opportunity to question the parties and any witnesses. Such written request shall be submitted to the bureau chief or designee. The panel shall schedule a hearing and determine where the hearing shall be held.

- Within 15 days following completion of the investigation of the complaint by the review panel, including, where requested, the presentation of evidence and the questioning of the parties or any witnesses, the panel shall issue a written report of its findings and its determination. Copies of the report and determination shall be forwarded to the parties to the dispute and the chairperson of the district parent advisory council.

- Appeals from decisions of the review panel may be brought to the U.S. Commissioner of Education within 30 days after receipt of the panel's decision.

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ESEA I Sec. 124(g) EVALUATIONS. - A local educational agency may receive funds under this title only if -

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(1) effective procedures are adopted for evaluating, in accordance with the evaluation schedule promulgated by the Commissioner under section 183 (b), the effectiveness of the programs assisted under this title in meeting the special educational needs of educationally deprived children;

(2) such evaluations will incude, during each three-year period, the collection and analysis of data relating to the degree to which programs assisted under this title have achieved their goals, including the requirements of section 130, and will also inlcude objective measurements of educational achievement in basic skills over at least a twelve-month period in order to determine whether regular school year programs have sustained effects over the summer; and

(3) the evaluation will address the purposes of the programs, including the requirements of section 130, and the results of the evaluations will be utilized in planning for and improving projects and activities carried out under this title in subsequent years.

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ESEA I Sec. 125(f) ASSESSMENT OF PARENTAL INVOLVEMENT AND TRAINING. - The National Institute of Education shall assess the effectiveness of (1) various forms of parental involvement, including parent advisory councils, on school governance, student achievement, and other purposes of this title, and (2) various methods of training the members of parent advisory councils, and shall report the results of such assessments to the Congress and the public.

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II-E. Evaluation

A sound instructional management program should have ongoing evaluation procedures which assess the degree to which project goals are being achieved. Such procedures should identify areas which need strengthening or revision, help monitor the educational progress of each pupil, and serve as an aid to the individualization of instruction. The following recommendations should be used as part of an evaluation plan to assess project success in fostering pupil progress:

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1. Project objectives should be stated in behavioral or measurable terms.

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2. Project objectives should describe how much the project's services or activities will improve students' performance.

3. Project objectives should indicate how much change constitutes improvement.

4. Performance criteria to verify that change has taken place should be stated.

5. Where pupils receive other similar services, a single comprehensive evaluation design across all such programs should be used.

6. Data collection procedures should be specified.

7. All program participants must be tested.

8. Reporting data on individual students should be included.

9. Testing instruments from the approved list which is found in the application materials should be used.

10. Norm -referenced tests with norms developed more than eight years ago require SED prior approval.

11. When using a norm-referenced test, the level of the test administered to a pupil should correspond to the pupil's level of performance and not necessarily to the pupil's grade or age level. (Out-of-level testing)

12. Each participant must be tested at least once annually or, where necessary because of choice of model, twice annually.

13. When testing takes place only once a year (Federal Model C), the test should be administered during the months of May or June.

14. When testing takes place twice a year (Federal Model A), the pretest should not be administered prior to September or later than the end of October. For the posttest, item 13 above applies.

15. A norm-referenced test with norms not established in the month in which it is to be used is unacceptable for program evaluation.

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16. Dates of pretest and posttest administration should be specified.

17. For short duration programs, particularly those which provide less than 60 hours of instruction per pupil, a criterion-referenced test should be used.

18. A request to use unpublished instruments should be accompanied by statistical evidence including instrument reliability and validity indices.

19. The form(s), level(s), and publication date(s) for standardized instruments should be specified.

20. Subtests for reading and/or mathematics should be specified.

21. The pretests and posttests must be compatible test instruments.

22. When a readiness instrument is used as a pretest, an achievement instrument cannot be used as a posttest. Rather, a readiness instrument should be used as both a pretest and posttest measure. The same principle is applied to achievement test usage.

23. Both raw scores and percentiles are needed for reporting norm-referenced tests.

24. Acceptable plans for the evaluation of objectives should be included.

25. A plan for data analysis should be provided.

For further information, please contact the Bureau of School and Categorical Programs Evaluation, (518) 474-7277.

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NON-PUBLIC SCHOOLS, GENERAL

ESEA I Sec. 130(a) GENERAL REQUIREMENTS. - To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and meeting the requirments of sections 122 and 123, and subsections (a), (b), (d), and (e) of section 124, and subsection (c) of section 126. Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

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ESEA I Sec. 124 (e) SKIPPING HIGHER RANKED SCHOOL ATTENDANCE AREAS OR SCHOOLS RECEIVING SERVICES OF THE SAME NATURE AND SCOPE FROM NON-FEDERAL SOURCES. - The Commissioner shall issue regulations providing for an exception to subsection (a) or (b) permitting local educational agencies to skip higher ranked eligible school attendance areas or eligible schools receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this title. Whatever children residing in eligible areas and attending private elementry and secondary schools are ineligible for services of the same nature and scope from non-Federal sources, such children shall be selected for programs and projects under this title without regard to the provisions of this subsection. The number of children receiving services under this title who attend private elementary and secondary schools shall be determined in each local educational agency receiving assistance under this title without regard to non-Federal compensatory education funds which serve children in public elementary and secondary schools who are also eligible for assistance under this title. Children attending private elementary and secondary schools who receive assistance under this title shall be identified in accordance with this section and without regard to skipping higher ranked school attendance areas or schools receiving services of the same nature and scope from non-Federal sources.

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S100b.659 FUNDS NOT TO BENEFIT A PRIVATE SCHOOL.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the special needs of students enrolled in private schools, rather than

(1) the needs of a private school; or

(2) The general needs of the students enrolled in a private school.

S100b.660 USE OF PUBLIC SCHOOL PERSONNEL. A subgrantee may make public personnel available in other than public facilities only-

(a) To the extent necessary to provide program benefits specially designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

S100b.661 USE OF PRIVATE SCHOOL PERSONNEL.

(a) A subgrantee may use program funds to pay for the services of an employee of a private school if-

(1) The employee performs the services outside-

(i) His or her regular hour of duty: and

(ii) The regular hours of the private school; and

(2) The employee performs the services under public supervision and control.

(b) This section does not apply to the following programs:

(1) Instructional Materials and School Library Resources, Improvement in Local Educational Practices, and Guidance, Counseling, and Testing-Title IV of the Elementary and Secondary Education Act; and

(2) Indochina Refugee Children Program-Title II of the Indochina Refugee Children Assistance Act.

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S100a.532 USE OF FUNDS FOR RELIGION PROHIBITED.

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(a) A grantee may not use its grant to pay for any of the following:

(1) Religious worship, instruction, or proselyzation;

(2) Equipment or supplies to be used for any of those activities;

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of those activities; or

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to-

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

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Based on the number of pupils served and their special educational needs, per pupil expenditures for program services in nonpublic schools shall be equal to per pupil expenditures in public schools.

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NON-PUBLIC SCHOOLS, BYPASS

ESEA I Sec. 130 (b) BY-PASS PROVISION. - (1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Commissioner shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

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(2) If the Commissioner determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

(3)(A) When the Commissioner arranges for services pursuant to this subsection, he shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this title.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Commissioner may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of such services.

(C) Any determination by the Commissioner under this section shall continue in effect until the Commissioner determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

(4)(A) The Commissioner shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Commissioner or his designee to show cause why such action should not be taken.

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(B) If a State or local educational agency is dissatisfied with the Commissioner's final action after a proceeding under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United State court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States code.

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(C) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

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(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgement of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

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NON-PUBLIC SCHOOLS, PUBLIC CONTROL OF FUNDED PROGRAMS

ESEA I - Section 124-(m) Control of Funds. - A local educational agency may receive funds under this title only if control of such funds, and title to property derived therefrom, is in a public agency for the uses and purposes provided in this title, and only if a public agency will administer such funds and property.

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ESEA I Sec. 151.(a) ENTITLEMENT TO GRANTS. -- A State agency which is directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this subpart for any fiscal year (but only if grants received under this subpart are used only for children in such institutions).

(b) Amount of Grant. -- (1) Except as provided in sections 156 and 157, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States) multiplied by the number of such neglected or delinquent children in average daily attendance, as determined by the Commissioner, at schools for such children operated or supported by the agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available.

(2) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such neglected or delinquent children in Puerto Rico by the product of --

(A) the percentage determined under the preceding sentence, and

(B) 32 per centum of the average per pupil expenditure in the United States.

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PROGRAM REQUIREMENT

ESEA I Sec. 152.(a) USE OF PAYMENTS. - A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children or in adult correctional institutions. Such programs and projects shall be designed to support educational services supplemental to the basic education of such children which must be provided by the State and such programs and projects shall be administered and carried out in a manner consistent with subpart 3 of part A, other than sections 122, 123, 125, 126(d), 126(e), and 130 thereof.

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(b) Three-Year Projects. - Where a State agency operates programs under this title in which children are likely to participate for more than one year, the State educaional agency may approve the application for a grant under this subpart for a period of more than one year, but not to exceed three years.

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ESEA I Sec. 157. No State shall receive in any fiscal year prior to October 1, 1983, pursuant to subpart 1, 2 or 3 of this part an amount which is less than 85 per centum of the amount which the State received in the prior fiscal year pursuant to the comparable sections of this title as in effect immediately preceding the enactment of the Education Amendments of 1978 or the comparable subpart of this part, whichever was in effect for such prior fiscal year, and, for any fiscal year ending prior to October 1, 1982, no State shall receive, pursuant to subpart 1 of this part, an amount which is less than 100 per centum of the amount that State received in the prior fiscal year pursuant to the comparable section of this title as in effect immediately prior to the enactment of the Education Amendments of 1978 or under subpart 1 of this part, whichever was in effect for such prior to fiscal year.

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The Bureau of Federal Education Opportunity Programs processes applications from other State agencies including the Division for Youth, Office of Drug Abuse Services and Department of Corrections.

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State Policies and
Federal Guidelines
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Applications for ESEA Title I Programs for Legislative Act districts (U.F.S.D.) are also processed by the Bureau of Federal Education Opportunity Programs.

The five regional offices of Federal Education Opportunity Programs process applications from LEA's which include proposed services to children residing in private institutions for neglected or delinquent children located within the school district boundaries.

Form ESEA 1-4, Children Residing in Institutions for Neglected and Delinquent Children, must be attached to each application containing a proposal for services to such institutionalized children.

In planning programs for an institution, the priorities of reading, math and bilingual methodology, where applicable, must be followed. The program must also be supplementary to the basic instruction provided from local tax levy and state aid sources.

Funds generated by a count of neglected or delinquent children which are not used for such children are not available for any other use. These funds cannot be reallocated. If a program was not offered in a previous year for neglected or delinquent children, the funds generated by this population may be carried over to the next year for their benefit.

LEA's which have local institutions for neglected or delinquent children within their borders and have been allocated funds on the basis of the number of these children must provide supplementary services to the eligible residents of the institution, according to priorities established by the New York State Education Department.

Services under Title I must be administered by an LEA and cannot be contracted to another agency.

NOTE: The former Division of Federal Education Opportunity Programs has been merged with the former Division of State Education Opportunity Programs to make a new Division of Education Opportunity Programs as of December 1979.

NOTE: Writing has been added to reading, mathematics and bilingual education as a priority.

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JAILS AND INSTITUTIONS, PROGRAM

ESEA I Sec. 153.(a) Grants Authorized. - The Commissioner is authorized to make grants to State and local educational agencies to support projects to facilitate the transition of children from State operated institutions for neglected and delinquent children into locally operated programs. Grants under this section shall be used to provide special educational services for children in schools other than State operated institutions.

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(b) Appropriations Authorized. - There are authorized to be appropriated for the purposes of this section for any fiscal year not to exceed 5 per centum of the amount State agencies are entitled to receive under section 151 for that year.

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SED PROCEDURES. RULEMAKING

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ESEA I Sec. 165. Nothing in this title shall be deemed to prohibit a State educational agency from adopting rules, regulations, procedures, guidelines, criteria, or other requirements applicable to programs and projects assisted under this title if they do not conflict with the provisions of this title, with regulations promulgated by the Commissioner implementing this title, or with other applicable Federal law. The Commissioner shall encourage a State educational agency, in adopting such rules, regulations, procedures, guidelines, criteria, or other requirements to recognize the special and unique needs and circumstances of the State and of each local educational agency in the State.

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149.7 - Supervision and evaluation by the commissioner.

(a) All programs for which the additional apportionment is spent pursuant to the provisions of this Part and sections 100.1 (f) and 103.2 (c) of this Chapter shall be subject to the general supervision of the commissioner, who shall have the right to inspect the facilities and operation of such programs and audit the records thereof at any time.

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Each LEA participating in an ESEA Title I program will be monitored for compliance at least once in two years. Using allocations, non-compliance and special need for assistance as a guide, approximately 360 LEA's will be monitored for regulatory purposes annually. Additionally, 200 LEA's will be visited for content review purposes.

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Twenty school districts with an allocation in excess of $500,000 will be monitored continuously for regulatory purposes and twice a year for content review.

One hundred seventy-two school districts with an allocation between $100,000 and $499,999 will be monitored twice a year for compliance (regulatory review) and once a year for content review.

Five hundred seventeen school districts with allocations under $99,999 will be monitored for compliance once in two years. Content area reviews will be conducted on the same schedule . . . .

In addition, SED staff from programs other than ESEA Title I (e.g., PSEN, reading, mathematics, bilingual education, evaluation, and English (writing) will visit school districts for purposes of monitoring programs and providing technical assistance in their specific program area. Each of these other programs makes visits to districts with projects in their specific program area each year. The results of these visits will be shared with ESEA Title I project offices . . . .

Each ESEA Title I project visited by the SED staff will be reviewed for compliance with all applicable ESEA Title I requirements, conformity with the approved applications, and evidence of effectiveness including but not limited to a review of evaluation reports . . . .

Responsibility for monitoring will be shared among several bureaus and divsions. Monitoring will take two major forms:

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Regulatory monitoring will focus on compliance with ESEA Title I regulations and statutes. Particular attention will be paid to monitoring for compliance with the Education Amendments of October 1978 with regard to: the designation of schools to be served through ESEA Title I; maintenance of effort; parent advisory councils, their selection and procedures for keeping PAC's informed; and the provision of equal, per capita, expenditures, for programs for eligible nonpublic school pupils. In situations where non-compliance exists, monitors will also assist in achieving compliance to ESEA Title I regulations within the approved application. Division of Federal Education Opportunity Programs will be primarily responsible for regulatory monitoring visits.

Program monitoring will focus on the instructional program quality and effectiveness of ESEA Title I projects. Personnel from bureaus such as reading, mathematics, English, bilingual education, pupil personnel, and evaluation will conduct these visits. The visits will be coordinated by the regional offices of the Federal Education Opportunity Programs . . .

The team approach to monitoring will coordinate the efforts of the content area bureaus; reading, English, mathematics, and bilingual education; by the program administration bureaus responsible for Education Opportunity Programs ESEA I/PSEN and Migrant Education. Evaluation, finance, and business management bureaus complete the team--each bureau has responsibilities in its own particular area both for federal and state programs. All units are involved in the approval of application and monitoring. The content of the LEA's program are the responsibilities of the bureaus of reading, English, mathematics, and bilingual education. They will have to agree in order for applications to receive final approval. These bureaus will also monitor districts regularly to provide assurance that the application is being carried out. Technical assistance is provided by each of these bureaus. Evaluation provides a system of data collection and analysis which guides the selection of sites to be monitored or assisted and meets reporting requirements. The other involved units emphasize compliance with state and federal regulations and coordinate the efforts of the content area bureaus . . .

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ESEA Title I Program Directive of April 3. 1979, requires that within 45 days after a project has been visited, the SED will issue its monitoring report to the agency conducting the project. That agency will be directed to respond within 30 days after it receives the report. New York State Education Department policy further requires that, within 15 calendar days after an on-site monitoring visit, the local school district or State agency will be notified in written reports of any non-compliance aspects of the program. A suggested timetable of correction will be proposed with a response from the LEA or State agency within 15 days and with the correction to take place within 60 days.

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Availability - As required by Section 125(c)(2) of ESEA Title I the SED will send copies of the monitoring reports and all other relevant significant documents to the appropriate District Advisory Council. As soon as the LEA or State agency receives the report it will be considered public information in accordance with Section 126(c) of ESEA Title I.

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FOLLOW-UP VISITS

For minor non-compliance problems, follow-up will be accomplished through correspondence and telephone. Where major non-compliance has been determined, a follow-up site visit will be conducted.

If the ESEA Title I staff member is satisfied that compliance has been achieved, the chief school officer as well as the appropriate District Advisory Council chairperson will be notified in writing.

If a determination is made that compliance has not been achieved, a further determination will be made as to whether or not to withhold a portion or all of the ESEA Title I funds.

COMPLIANCE AGREEMENTS

The State Education Department may suspend the initiation or continuation of its withholding action under subsection (a) while there is in effect a compliance agreement with the local educational agency or State agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the local educational agency or State agency fails to comply with the terms agreed to, such agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the State educational agency shall take into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term "compliance agreement" means an agreement which -

(1) sets forth the terms and conditions to which the local educational agency or State agency has agreed in order to comply with the requirement of this title or the General Education Provisions Act and regulations promulgated thereunder, and wth the applicable rules, regulations, procedures, guidelines, criteria or other requirements adopted by the State educational agency;

(2) addresses all the matters that formed the basis for the initiation of the withholding action by the State educational agency; and

(3) may consist of a series of agreements that in the aggregate dispose of all such matters.

Within fifteen days after the execution of any compliance agreement, the State educational agency shall send a copy thereof to the district advisory council affected, and to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

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SED PROCEDURES, COMPLAINTS

Complaints must be in writing and signed by the complainant.

Complaints must be sent to the appropriate ESEA Title I regional office or to the Department in Albany.

Upon receipt of the written complaint the SEA performs an on-site investigation. Such on-site investigations will (a) be made following adequate advance notice to the parties involved, (b) include the gathering of information through interview and examination of records concerning each allegation of the complaint, and (c) will provide appropriate opportunity for the complainants and the LEA to present evidence concerning the allegations.

Complaints will be brought to resolution within 60 days from the date the complaint was received. In the event unforeseen circumstances preclude resolution within 60 days, written interim progress reports will be made to the U.S. Commissioner of Education which indicate continuing problems, project actions, and a timeline for resolution.

Copies of correspondence, related documents, investigative reports, and summary reports involved in the complaint resolution process will be maintained in the State Education Department Division of Federal Education Opportunity Programs. These files will open for inspection in accordance with the provisions of the New York State Freedom of Information Law.

Within 5 days after receipt of a complaint, a bureau chief in the State Education Department's Division of Federal Education Opportunity Programs, or his designated staff representative, wil provide to the complainant, the local education agency, and the District Advisory Council chairperson, a written summary of the complaint and notice of the procedures to be followed in resolving the complaint.

Within 10 days after receipt of a complaint, the bureau chief or designee responsible for investigating the complaint shall conclude the investigation and contact the parties in the dispute relative to a proposed resolution of the matter. Such resolution, if satisfactory to the parties in the dispute, shall be implemented by the appropriate parties.

Where the matter has not been resolved by the bureau chief or the designee, the complaint shall be referred immediately to a review panel consisting of an assistant commissioner and two other administrative staff members in the State Education Department, designated by the New York State Commissioner of Education.

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Monitoring and
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1979-1980
1980-1981
1981-1982

continued

The parties in the dispute shall receive written notification from the bureau chief or designee that the complaint has been referred to a review panel. Within 10 days of the date of such notice is issued, the complainant or the local education agency may request, in writing, an opportunity to present evidence, including an opportunity to question the parties and any witnesses. Such written request shall be submitted to the bureau chief or designee. The panel shall schedule a hearing and determine where the hearing shall be held.

Within 15 days following completion of the investigation of the complaint by the review panel. including, where requested, the presentation of evidence and the questioning of the parties or any witnesses. the panel shall issue a written report of its findings and its determination. Copies of the report and determination shall be forwarded to the parties in the dispute and the chairperson of the District Advisory Council.

Appeals from decisions of the review panel may be brought to the U.S. Commissioner of Educaiton within 30 days after receipt of the panel's decision.

If the LEA fails to take corrective action following a final determination on the complaint, the SEA will use one or more of the following methods to insure such action:

- Follow-up visits by SEA staff to determine whether the agency is taking the required corrective action.
- Compliance agreements under Section 169(c) of Title I.
- Withholding of Title I funds under Section 169(a) of Title I

NOTE: For specific and detailed legal basis for resolution of complaints and appeals see:

Handbook I
Regulations of the Commissioner of Education
Relating to Appeals and Other
Proceedings Before the Commissioner
February 20. 1978
SED, Office of Counsel
Albany, New York 12234

DEFINITIONS

The term 'average daily attendance' means attendance determined in accordance with State law, except that notwithstanding any other provision of this title, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this title the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

ESEA I
Section 198(a)
P.L.95-561
11/1/78

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The term 'average per pupil expenditure' means in the case of a State or the United States, the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

ESEA I
Section 198(a)
P.L.95-561
11/1/78

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"Awarding party" means (1) with respect to a grant, the granting agency, and (2) with respect to a subgrant, the grantee.

EDGAR
5/4/79

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The term 'Commissioner' means the United States Commissioner of Education.

NOTE: This is only true in the context of federal documents, and in any case, now means "the Secretary of Federation."

ESEA I
Section 198
P.L.95-561
11/1/78

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DEFINITIONS

The term 'construction' includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

ESEA I
Section 198
P.L.95-561
11/1/78

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"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant and "subcontract" means a procurement subcontract under such a contract.

EDGAR
5/4/79
74.3

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"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs but the term does not include subcontracts under a non-cost-type contract or subcontract.

EDGAR
5/4/79
74.3

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The term 'county' means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

ESEA I
Section 198
P.L.95-561
11/1/78

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The term 'current expenditures' means expenditures for free public education, including expenditures for administration, instruction, attendance, and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under this title or parts B and C of title IV of this Act.

ESEA I
Section 198
P.L.95-561
11/1/78

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A "delinquent child" means a person under twenty-one years of age who is under commitment or remand by court of competent jurisdiction or who has been legally surendered by his parent or guardian to an institution established under and incorporated by sate law to provide care, custody and rehabilitation for delinquent children, or to a detention home or house or shelter pending hearings on delinquency petitions, or on remand to juvenile or other courts.

New York State
Education Law
Section 4401

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DEFINITIONS

"Director of the national Institute of Education" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education to whom the Director has delegated authority.

EDGAR
5/4/79
100c.1

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"EDGAR" means the Education Division General Administrative Regulations (parts 100a, 100b, and 100c of this title).

EDGAR
5/4/79
100c.1

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. . .the term, "educationally disadvantaged children" refers to children who are achieving one or more years behind the achievement expected at the appropriate grade level for such children.

GEPA
Section 417(a) (2)
P.L.93-380
8/21/74

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"Elementary school" means a day or residential school that provides elementary education, as determined under State law. (Sources: 160f.2; 191.12; 100.1; 116.2(b) App. sec. 403).

EDGAR
5/4/79

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The term 'elementary school' means a day or residential school which provides elementary education, as determined under State law.

ESEA I
Section 198
P.L.95-561
11/1/78

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The term 'equipment' includes machinery, utilities and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and book, periodicals, documents, and other related materials.

ESEA I
Section 198
P.L.95-561
11/1/78

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"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants. the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report).

EDGAR
5/4/79

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"Federally recognized Indian tribal government" means the governing body of a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 680) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see 74.4(c). "Aplicability of this part."

EDGAR
5/4/79

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"Fiscal year" (Federal) means a period beginning on October 1 and ending on the following September 30. (Source: 100.1; 1400.1; 1501.3)

EDGAR
5/4/79

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The term 'free public education' means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12.

ESEA I
Section 198
P.L.95-561
11/1/78

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"GEPA" means The General Education Provisions Act.

EDGAR
5/4/79

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"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or an eligible recipient. The term includes such financial asistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CPR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

EDGAR
5/4/79

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"Grant period' means the period for which funds have been awarded. (Sources: HEW GAM 1-85: 100-100d App A para. 1(b); 1400.4; 100.1)

EDGAR
5/4/79

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DEFINITIONS

"Grantee" means the government, nonprofit organization or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school of a university. In these cases, the granting agency usually intends, or actually requires, that the names component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligiblity is limited to organizations, such as State welfare departments, which may be only components of legal entity). The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

EDGAR
5/4/79

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"Granting agency" means any organizational component of HEW authorized to award and administer grants.

EDGAR
5/4/79

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A "handicapped child" is one who, because of mental, physical or emotional reasons, cannot be educated in regular classes but can benefit by special services and programs to include, but not limited to, transportation, the payment of tuition to boards of cooperative educational services and public school districts, home teaching, special classes, special teachers, and the resource rooms.

New York State
Education Law
Section 4401

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ESEA VII Sec. 703.(a)(1) The term "limited English proficiency" when used with reference to individuals means-

P.L.95-561
11/1/78

(A) individuals who were not born in the United States or whose native language is a language other than English.
(B) individuals who come from environments where a language other than English is dominant, as further defined by the Commissioner by regulation, and

continued

continued

(C) individuals who are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, subject to such regulations as the Commissioner determines to be necessary and, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English.

P.L.95-561
11/1/78

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The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

ESEA sec. 198
P.L.95-561

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"Local educational agency" means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform service functions for public elementary or secondary schools in -
(1) A city, county, township, school district, or other political subdivision of a State; or
(2) Such combination of school districts or counties as a State recognizes as an administrative agency for its public elementary or secondary schools; or
(b) any other public institution or agency that has administrative control and direction of a public elementary or secondary schools.

EDGAR
5/4/79

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DEFINITIONS

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, or local public authority, school district, special district, interstate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CPR 620.2, 40FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see 74.4(c), "Applicability of this part."

EDGAR
5/4/79

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ESEA VII Sec. 703(a)(3) The term 'low income' when used with respect to a family means an annual income for such a family which does not exceed the poverty level determined pursuant to section 111(c)(2) of Title I of the Elementary and Secondary Education Act of 1965.

P.L.95-561
11/1/78

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"Maintenance Eligiblity" students. These are those students who were identified in previous years, who are no longer eligible according to the criteria in Lines 1 and 3, and have not yet achieved grade level or the 50th Normal Curve Equivalent (NCE). These students should receive a level of service which is designed to maintain their gains.

Guidelines and
Instructions for
Comprehensive
District Plan
1980-81
NYSED

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"Minor remodeling" means minor alterations, in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alternations to buildings, building maintenance, or repair. (Sources: 1400.1, 100.1, 143.2: 141.1; 142.3; 186.2)

EDGAR
5/4/79

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ESEA VII Sec. 703.(a)(2) The native language when used with reference to an individual of limited English proficiency, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

P.L.95-561
11/1/78

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DEFINITIONS

A "non-English-speaking child" means a person under twenty-one years of age who is unable to speak and understand the English language.

New York State
Education Law
Section 4401

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"Nonprofit", as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity. (Sources 160f.2, 175.2, 190.2, 100.1, 1501.3).

EDGAR
5/4/79

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"Nonpublic" as applied to elementary or secondary school that is operated or controlled by an organization that is not a public agency.

EDGAR
5/4/79

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"OGP" means the Office of Grants and Procurement, which is an organizational component within the Office of the Secretary, HEW, and reports to the Assistant Secreatary for Management and Budget.

EDGAR
5/4/79

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"OMB" means the Office of Management and Budget within the Executive Office of the President.

EDGAR
5/4/79

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The term 'parent' includes a legal guardian or other person standing in loco parentis.

EDGAR
5/4/79

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"Preschool" means the eduational level from a child's birth to the time at which the State provides elementary education. (Source: 100.1)

ESEA I
Section 198
P.L.95-561
11/1/78

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"Private" as applied to an agency, organization, or institution, means that it is not under public supervision or control. (Source 1401.1; 1501.3)

EDGAR
5/4/79

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DEFINITIONS

"Project" means the activity described in an application. (Sources: HEW Gam 1-85)

EDGAR
5/4/79

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The term 'project area' means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this title.

ESEA I
Section 198
P.L.95-561
11/1/78

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As used in 100a.620 "Project materials" means copyrightable work developed with funds from a grant Education Division.

EDGAR
100a.622
5/4/79

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"Pupils with special educational needs" shall mean the number of pupils attending the public schools of a district computed as follows: (1) determine the number of third and sixth grade pupils who scored below level four on the reading test and those who scored below level four on the mathematics test for New York State elementary schools administered in the school nineteen hundred seventy-four-seventy five and nineteen hundred seventy-five-seventy-six, provided, however, that a district employing eight or more teachers in such years but not operating a third or sixth grade may use the percentage computed pursuant to this paragraph for the district which in such years enrolled the greatest number of third or sixth grade pupils who took each of such tests, provided, however, that a district which in nineteen hundred seventy-four-seventy-five or in nineteen hundred seventy-five-seventy-six did not maintain a home school or employed fewer than eight teachers and which in the base year employed eight or more teachers, may use the scores in a later test as designated by the commissioner for the purposes of this paragraph, express the result as a percentage carried to one decimal place without rounding and (2) multiply such percentage by the district's base year total aidable pupil units minus the district's additional aidable pupil units computed pursuant to (subdivision) nine and in e-a of this section. For the purposes of the computation made pursuant to this paragraph, pupils attending campus schools of the state university shall be included in the numbers of pupils in the district in which they reside. The percentage of such pupils in component districts shall be used in the case of central high school districts.

New York State
Education Law
Section 3602 #13
amended by
Chapter 74
April 14, 1978

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"Recipient" means grantee or subgrantee.

EDGAR
5/4/79

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The term 'school attendance area" means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

ESEA I
Section 198
P.L.95-561
11/1/78

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The term 'school facilities' means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilties are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

ESEA I
Section 198
P.L.95-561
11/1/78

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"Secondary school" means a day or residential school that provides secondary eduction, as determined under the State law. In the absence of State law, the Commissioner determines whether the term includes education beyond the twelfth grade.

EDGAR
5/4/79

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"Secretary" means the Secretary of the Department of Health, Education, and Welfare, or an official or employee of the Department to whom the Secretary has delegated authority.

EDGAR
5/4/79

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"Service function", with respect to a local educational agency -

EDGAR
5/4/79

(a) Means an educational service that is performed by a legal entity, such as an intermediate agency--(1)(i) Whose jurisdiction does not extend to the whole State; and
(ii) That is authorized to provide consultative, advisory or educational program services to public elementary or secondary schools; or
(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.
(b) The term does not include a service that is performed by a cultural or educational resource. (Source 100.1)

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The term 'State' means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northen Mariana Islands, or the Trust Territory of the Pacific Islands.

ESEA I
Section 198
P.L.95-561
11/1/78

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DEFINITIONS

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education. EDGAR 5/4/79

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"State" includes each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. EDGAR 5/4/79

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"State eductional agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State Law. EDGAR 5/4/79

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"Subgrant" mans an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contract but does not include procurements; nor does it inlcude any form of assistance which is excluded from the definition of "grant" in this section. EDGAR 5/4/79

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"Work of art" means an item that is incorporated into facilties primarily because of its aesthetic value. EDGAR 5/4/79

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